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*W. Pearce*  
*28th Oct 1850*

A

TREATISE

ON THE

LAW AND PRACTICE

OF

AGRICULTURAL TENANCIES;

WITH

**Forms and Precedents.**

BY

GEORGE WINGROVE COOKE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

*Author of "A Treatise on the Law relating to Inclosures and Rights of Common,"  
dc., dc., dc.*

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## P R E F A C E.

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VERY frequent employment by the Tithe Commission, to adjudicate upon the prescriptions that passed in review before that Board, has taken me during the last ten years into every part of the kingdom, and placed me in contact with most of the practical agriculturists of England. I have attempted to utilize my opportunities by the production of the following work.

Written contracts, whether in the form of agreements or leases, are grown into more general, but still not into very general, use throughout the kingdom. The ordinary class of farmer—with not too much capital, no exuberant enterprize, and little confidence in new systems, but with considerable shrewdness and great talent for bargaining—prefers the elasticity of a parol contract. Reductions of rent, allowances for improvements, and the lax culture obligations of the custom of the country, are all opportunities for constant haggling, and, unless the agent be a very shrewd, hard man, for constant petty victories. No wonder that a simple verbal tenancy is preferred by this class, to security for improvements they never intend to make, and covenants for good husbandry precisely defined.

Gradually, however, cunning must give place to wisdom ; and this class of farmers must surrender to strangers, or must be succeeded by sons who have learned the necessity of an exact demarcation of their rights and obligations. Little advantages gained, small reductions, occasional allowances, are as nothing when compared with the vast yearly difference of produce raised from the same land, by a farmer who drains and highly manures and a farmer who does not. Yet he must be too improvident a man to be a good farmer, who should invest in the land capital sufficient for high cultivation, without some security that a change in the ownership of the estate (whatever well-founded confidence he may have in the present landlord) may not at any moment bring a notice to give up farm, improvements, and capital, and leave it all, uncompensated, to a stranger. If the modern system of husbandry is to progress until it becomes universal, precise written contracts must extend over the land with an equal pace. It will be conceded that a species of contract, which thus bids fair to control the management of all the land of England, deserves more special consideration than it could receive in those general works whereof it formed but a very subordinate subdivision.

During the years which have elapsed since the idea of a book upon this subject was formed, and the collection of materials was commenced, I have applied to nearly all, and been refused aid by no one of the well-known masters of the very ancient art, but very modern science, of agriculture. If I have failed in the use of my materials, the failure is my own ; for copious stores of information were always at my command. The few



exceptions, where inquiries were unavailing, were in those lagging counties where little of agriculture was to be learned, and no proficients, even in the art, were to be found.

If I do not here record my obligations to individuals, it is because the catalogue would prove too long. The names, however, will be found scattered throughout the work. A lawyer's opinion upon matters agricultural would be justly rejected as worthless; and I have therefore advanced no agricultural proposition without an agricultural authority. Of this portion of my work, nothing is my own but the labour of collection.

In dealing with the legal portion of the subject, I have not pretended to supersede the necessity of consulting, in all intricate cases, the various treatises upon the Law of Landlord and Tenant, and upon Conveyancing, which are now in established use. I have taken only those general principles of law which were necessary to my purpose, hung upon them all the agricultural cases which the books contain, and brought down the decisions to the latest numbers of the reports.

The statement of district customs occupies much space, and has been a laborious and unsatisfactory work. It has been attempted, and abandoned as impracticable, by great authorities; and I must confess that I am not satisfied with my own production. But this shifting and uncertain mass of tradition is at present the common law of agriculture. The work would have been obviously defective without some attempt to ascertain it; and the epitome given, is the statement of land agents and surveyors, first in character and experience in their respective districts. Except in the few

counties where such statements could not be obtained, the vagueness, if any, is not attributable to the statement, but exists in the custom. Very much will have been gained, if the sketch I have given shall induce landlords and tenants to exclude so uncertain a rule from all their contracts.

In discussing the stipulations of the tenancy agreement, and the covenants of the farming lease, I have paid especial attention to the great points of produce rents, culture covenants, tenant-right, and the expediency of terms of years—obtruding no theories, and giving expression to no ideas of my own, but always gathering the facts and opinions from those whose experience gives them authority. I am encouraged to hope, that the information collected upon these subjects will render them less a mystery to the draughtsman than they have hitherto been.

The precedents, in addition to the common practical forms submitted upon my own responsibility, include almost every form which has been recently introduced by those landlords who are so energetically occupied in the improvement of agriculture. But as the value of any new form of contract must obviously depend upon the confidence which others have in the liberality and capacity of its author, I have seldom thought it advisable to produce a *new* precedent, unless allowed to mention the estate to which it has been applied. In the collection, there are many old forms, and some which are generally objectionable and unfair, although containing occasional stipulations that are practically useful; but it was unnecessary, and indeed obviously impossible, to cite an authority for a precedent, except

as a pledge for its fairness, and an inducement to its adoption.

Pains have been taken to render the book convenient as a work of reference; and although it may rarely happen that any one of the precedents can exactly fit all the exigencies of a particular case, yet it is hoped that the index will seldom be searched without offering a form of the special stipulation required.

That some work of this kind was needed, both by the profession and the public, will, as I have already said, be, I think, conceded. If this book should go near to supply the want, I hope that those who use it will enable me to render it at some future time more perfect.

GEO. WINGROVE COOKE.

*2, Brick Court, Temple,*  
*October, 1850.*



# CONTENTS.

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## CHAPTER I.

### OF A TENANCY AT WILL, p. 1—4.

Definition.—How created.—Distinction between Tenancy at Will and from Year to Year, and Tenancy by Sufferance.—Determination of Tenancy at Will.—Obligations of a Tenant at Will.

## CHAPTER II.

### OF A TENANCY FROM YEAR TO YEAR CREATED BY PAROL, p. 5—11.

Definition.—How created.—Payment of Rent.—Commencement and Termination of Tenancy.—Effect of Determination of Landlord's Estate.—Determination of Tenancy by Notice to Quit.—By Disclaimer.

## CHAPTER III.

### OF THE RIGHTS AND OBLIGATIONS ATTACHED BY LAW TO PAROL YEARLY TENANCIES, p. 12—41.

#### SECT. 1.—*Quiet Enjoyment.*

Warranty by Landlord.—When Tenancy useless.—Fire.  
—No Warranty that Premises shall be fit for the Purpose contemplated by Tenant.

#### SECT. 2.—*Obligation to pay Rent.*

Generally.—Period of Payment.

#### SECT. 3.—*Tithe Rent-charge.*

#### SECT. 4.—*Landlord's Right to distrain.*

Who may distrain.—What may be distrained.—Cattle.—Other Points.

#### SECT. 5.—*Waste.*

Voluntary or permissive.—What is Voluntary Waste.—Remedy for.

#### SECT. 6.—*Notice to Quit.*

Who may give.—Agents.—To whom given.—Length of Notice.—Description of Premises.—Notice must be certain as to Intent.—Service.—Waiver of Notice.—Form of Notice.

- SECT. 7.—*Obligation to give up Possession.*  
Generally.—Double Value.—Double Rent.—Statutory Provisions.
- SECT. 8.—*Recovery of Possession.*  
Desertion of the Premises.
- SECT. 9.—*Emblements.*  
What are.—Who are entitled to.
- SECT. 10.—*Agricultural Fixtures.*

## CHAPTER IV.

OF THE CUSTOM OF THE COUNTRY, p. 42—136.

- SECT. 1.—*General Nature and Validity of.*
- SECT. 2.—*Usual Scope of.*  
Husbandlike Culture.—Manure.—Old Turf.—Commencement of Tenancy.—Pre-entry to plough.—Outgoing and incoming Obligations.—Periods of Payment of Rent.—Repairs.—Restrictions and Obligations in Management of Farm.
- SECT. 3.—*Epitome of the Agricultural Customs in England and Wales.*
- SECT. 4.—*General Observations on the Customs.*
- SECT. 5.—*Construction and Operation in Law.*  
In Parol Tenancies.—Waygoing Crop.—Tithes.—Operation of Customs in Cases of Agreement and Leases.—Remedies for Breach of Custom.—Upon whom Customs are binding.

## CHAPTER V.

OF TENANCIES FROM YEAR TO YEAR CREATED OR GOVERNED BY WRITTEN INSTRUMENTS, p. 137—150.

- SECT. 1.—*Nature of the Instrument.*  
Generally.—Proposals to take.—Particulars of Tenancy.—Declaration as to Custom of the Country.—Acknowledgment of Terms of Tenancy.—Agreement for a Lease.—Distinction between a Lease and an Agreement.
- SECT. 2.—*Effect of Occupation under Agreement.*  
As to Landlord's Remedy by Distress.—As to Covenants agreed to be inserted in Lease.—Alteration of Amount of Rent.—Who are bound by Agreement.—Proposed Alterations in the Law.
- SECT. 3.—*Effect of Occupation under Lease.*

## CHAPTER VI.

OF THE INSTRUMENT OF LETTING FROM YEAR TO YEAR, p. 151—247.

Generally.

SECT. 1.—*Of the Parties.*

SECT. 2.—*Of the Parcels.*

SECT. 3.—*Exceptions and Reservations.*

Trees.—Soil and Turf.—Water.—Right of Way.—Game.

General Observations.

SECT. 4.—*The Habendum.*

Generally.—Michaelmas Entry.—Lady-day Entry.

SECT. 5.—*Of the Reddendum.*

Generally.—Demand of Rent.—Arrears.—Nature of Rent reserved.—Metayer System.—Grain and Produce

Rents.—Valuations for Rent.—Additional Rents.

SECT. 6.—*Of the Covenants by the Tenant.*

a. To pay Rent and Taxes.

b. Against Waste.

c. To repair.

d. To insure.

e. Against converting Old Turf.

f. To protect Trees.

g. To make all Incoming Payments.

h. General Covenants to cultivate in a Husbandlike Manner.

i. Particular Covenants as to Culture.—General View of Farm Produce.—Rotation of Crops.—Sale of Hay and Straw.—Manure.—Two-field Course.—Four-field Course.—Five-field Course.—Six-field Course.—As to Expediency of prescribing the Rotations of Crops.—Other Provisions against exhausting the Land.

j. Against exhausting and injurious Plants.

k. As to Culture after Notice to Quit given.

l. Against assigning or underletting.

m. To quit at End of Term.

n. Construction of Tenant's Covenants.

SECT. 7.—*Of the Covenants by the Landlord.*

a. Covenant for quiet Enjoyment.

b. To allow Tenant a Pre-entry to plough.

c. Outgoing Allowances.—General View of Tenant-right.  
—Permanent Improvements.

SECT. 8.—*Of the Mutual Covenants.*

a. To refer Differences to Arbitration.

b. For estimating Value of Outgoer's Interest.

SECT. 9.—*Of the Provisoes and Conditions.*

- a.* Against the Operation of the Custom of the Country.
- b.* For Resumption of Land.
- c.* Agreement not to operate as a Present Demise.
- d.* For Re-entry.
  - For Non-payment of Rent.—Demand of Rent.—Statute.—Relief in Equity.—Statute.
  - For Breach of Covenants.
  - In what Cases Equity will relieve.—Notice of Breaches.
  - For Bankruptcy, Insolvency, &c.—Statutes.—Outgoing Allowances, how affected by Re-entry.
  - Of the Proviso generally.
  - Cases upon the Construction of Special Proviso for Re-entry without Action of Ejectment.
- e.* Waiver of Forfeiture under Provisoes.

SECT. 10.—*Signature.*

Proposals.—Agreements.—Leases.

## CHAPTER VII.

FORMS OF INSTRUMENTS OF LETTING FROM YEAR TO YEAR,  
p. 248—400.

SECT. 1.—*Common Practical Forms.*

- No. 1.—Form of Agreement for a Lease from Year to Year.
- No. 2.—Ditto, shorter Form within Fifteen Folios.
- No. 3.—Form of Proposals to take.
- No. 4.—Form of Lease from Year to Year (with Provisions for Waygoing Crop).

SECT. 2.—*General Collection of Stipulations for Agreements.*

- Nos. 1 to 4.—Commencements, Premises, &c.
- Nos. 5 to 9.—Habendum.
- Nos. 10 to 15.—Reservations.
- Nos. 16 to 19.—Reddendum, Money Rents.
- Nos. 20 to 23.—Corn Rents.
- No. 24.—Additional Rents.
- Nos. 25 to 38.—Tenant's Obligations, Rent, Taxes, Repairs, Insurance.
- Nos. 39 to 41.—Against Waste.
- Nos. 42 to 44.—Buildings.
- Nos. 45 to 47.—Fences.
- Nos. 48 to 50.—Trees.
- Nos. 51 to 56.—Game.
- Nos. 57 to 70.—General Stipulations as to Culture.
- Nos. 71 to 89.—Specific Stipulations as to Culture.



SECT. 2.—*General Collection of Stipulations for Agreements*—continued.

Nos. 90 to 96.—Manure.

Nos. 97 to 100.—Injurious Plants.

Nos. 101 to 108.—Miscellaneous Stipulations.

Nos. 109 to 120.—Outgoing and Incoming.

Nos. 121 to 128.—Outgoing Allowances for Improvements.

No. 129.—Allowances for Game.

Nos. 132 to 140.—Provisoos and Conditions.

SECT. 3.—*Special Precedents.*

No. 1.—Conditions of Letting, with Outgoing Allowance for Drainage, Fencing, and Manures. Michaelmas Tenancy, in use upon the Earl de Grey's Estates in Bedfordshire.

No. 2.—Lease adapted to Customs of Suffolk with Outgoing Allowances. Old Michaelmas Tenancy, settled by Mr. Kersey and in use upon Mr. Tollemache's Suffolk Estates.

No. 3.—Agreement in use in Worcestershire.

No. 4.—Agreement adapted to the Customs of Nottinghamshire, settled by Mr. T. Smith Woolley.

No. 5.—Ditto for Clay and Heavy Lands.

No. 6.—Ditto, as settled by Mr. Parkinson, and in use in the St. Alban's Estates.

No. 7.—Agreement for a Lease adapted to Customs of Northumberland.

No. 8.—Agreement adapted to Lancashire Customs.

No. 9.—Agreement adapted to Derbyshire—Lady-day Tenancy, and in use upon some of the Duke of Devonshire's Estates.

No. 10.—Agreement adapted to Lincolnshire.

No. 11.—Agreement, with Stipulations for Tenant-right, in use upon the Earl of Yarborough's Lincolnshire Estates.

No. 12.—Shorter Form, in use upon the Earl of Yarborough's Hampshire Estates.

No. 13.—Agreement in use in Cheshire, with stringent Provisions in favour of the Landlord.

No. 14.—Agreement in use in Cheshire, with Stipulations for Tenant-rights, settled by Mr. Woollett Wilmott.

No. 15.—Conditions of Letting in use upon Sir R. B. W. Bulkeley's Estates.

No. 16.—Conditions of Letting adapted to a Highland District, and with stringent Provisions in favour of the Landlord, taken from an Agreement in use in the County of Perth.

No. 17.—Agreement for Letting a Labourer's Cottage.

## CHAPTER VIII.

OF LEASES FOR A TERM OF YEARS, p. 401—406.

Policy of Leases for Terms as distinguished from Yearly Agreements.—  
Length of Term.—Formal Parts of the Lease.—Covenants.—Pro-  
visoes.

## CHAPTER IX.

FORMS OF LEASES FOR TERMS OF YEARS, p. 407 to 506.

- No. 1.—Lease for Twenty Years, and so from Year to Year afterwards, determinable after Two Years' Notice, with Special Proviso for Re-entry; and Covenants expressly adapted to the Security of the Landlord. Reservations of Game and Cottages.
- No. 2.—Lease for Twenty-one Years with Provisions expressly adapted to the Protection of the Lessee.
- Tenant to expend Moneys in Improvements—put in repair Farm Buildings—erect new Buildings and drain: to forfeit his Lease if he persist in cultivating in a Manner which Arbitrators shall decide to be injurious.
- Landlord to allow Tenant to remove Machinery—to purchase Fixtures at a Valuation, or to allow Tenant to remove them.
- Special Covenant that Tenant's Representatives may assign Lease if Landlord refuses to purchase it at Arbitration Price. Special Covenants as to Arbitration, and as to Outgoing Valuations.
- No Reservation of Game.
- No. 3.—Lease for Eight Years, with Provisions as to stocking and managing Down Land.—Sheep Folding—Water Meadows.—Option to Lessee to determine Lease at the End of the first Four Years on Notice given.
- No. 4.—Common Agricultural Lease, for Twenty-one Years.
- No. 5.—Lease with Corn Rent.—Covenants for Drainage—for Quiet Enjoyment Absolute—for Erection of Buildings by Landlord.—Commencement at Lady-day with Pre-entry upon Fallows and Meadow.
- No. 6.—Lease for Nineteen Years.—Entry at Whitsunday as to House and Grass Lands, and after Harvest as to Corn Lands.—Reservation of Right to plant, &c., and to sport, &c.; but on Condition of making Compensation for Injury done.—Income to spend on the Farm Moneys received from Outgoer for Dilapidations.—Landlord to pay for New Buildings, &c.—Power to remove Useless Fences.—Culture Covenants, distinguishing between the first Fourteen Years and the last Five Years of the Lease.—Manure to be paid for, and Outgoer's last Crop to be taken at a Valuation.
- No. 7.—Lease with Grain Rent with a maximum Limit.

- No. 8.—Lease for Nineteen Years.—Martinmas Entry, except as to Barn and Stabling, and Whitsunday as to these.—Reddendum, part in Money, and the rest in Oats; the last Year's Rent to be due at Time of Removal.—Covenant to reside or pay additional Rent.—Special Provisions as to Culture during last Four Years; and as to Awaygoing Obligations.
- No. 9.—Lease with Provisions as to Fences adapted to Dairy Farm.
- No. 10.—Form of a Lothian Lease or Tack, with very Special Provisions as to Fences, Culture, breaking up and laying down Old Grass, Manure, Repairs, and Buildings.
- No. 11.—Form adapted from another Lothian Lease with Special Provisions as to Commons Thirlage and Culture during the last Seven Years of Term.
- No. 12.—Short Lease under 8 & 9 Vict. c. 124.

#### MISCELLANEOUS FORMS OF PARTS OF LEASES.

Reddendum with Additional Rents.

Another Form.

Reddendum.—Wheat Rent, limited to a Maximum of Seventy-two Shillings, and to a Minimum of Forty Shillings per Quarter, and to be ascertained by Prices of neighbouring Markets.

Reddendum.—Mixed Corn Rent, based upon the Tithe Rent-charge Averages.

Covenant that Lessee shall drain, receiving Tiles.

Covenant that Lessee shall drain the whole Farm at his own Expense.

Covenant that Lessee shall pay Per-centage upon Outlay for permanent Improvements.

Covenant that Lessee shall put the Farm in working Order; Lessor finding Materials.

Covenant for Outgoing Allowances adapted to Sussex Customs.

Covenant for Outgoing Allowances adapted to the Weald of Sussex.

#### CHAPTER X.

OF THE STAMP DUTIES ON INSTRUMENTS OF LETTING FARMS,  
p. 507—516.

Proposal to take.—Agreements for a Lease.—Leases.

#### APPENDIX.

No. 1.—Stat. 8 & 9 Vict. c. 124. (Short Lease Act.)

No. 2.—Form of Valuation between Outgoer and Incomer.



THE  
LAW AND PRACTICE  
OF  
Agricultural Tenancies.

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CHAPTER I.

OF A TENANCY AT WILL.

**Definition.**—How created.—Distinction between Tenancy at Will, and from Year to Year, and Tenancy by Sufferance.—Determination of Tenancy at Will.—Obligation of a Tenant at Will.

A **TENANT** of a farm (in the limited sense in which we here use the word) holds either, 1st, as tenant at will; 2nd, as tenant from year to year; or, 3rd, as lessee for a term of years.

His security for his tenancy is either, 1st, the implication which the law raises upon the facts of his holding the land and paying rent; 2nd, a verbal agreement in which the conditions of the tenancy were stated; 3rd, a written agreement for a lease; and 4th, a lease.

It may, perhaps, be convenient that we here state briefly some of the principal incidents of a tenancy at will from year to year, and for a term of years.

**TENANCY AT WILL.**

A tenancy at will is where a tenant holds his farm at the will of his landlord, who may put him out at any time he pleases.

A tenancy at will is, however, one of the most rare spe-

cies of tenancies in practice ; for those tenancies which are popularly called tenancies at will are generally tenancies from year to year.

To create a tenancy at will there must be a distinct reservation of a right to determine the tenancy at the will of one or either of the parties, such as "I give you Broadacre to enjoy as long as I please, and to take again when I please," or "to hold henceforth at the will and pleasure of B. at the yearly rent of 25*l.* 4*s.* payable quarterly (a) : " or, if the agreement be to hold so long as both parties like, reserving a compensation accruing *de die in diem*, and not referable to a year or to any aliquot part of a year. In such cases the tenancy is a tenancy at will (b). The estate may be created by express words ; but the Courts will not imply that it was the intention of the parties to create an estate at will unless the intention was clear (c).

In some cases, however, a tenancy at will is still implied from the circumstances of the holding. As where a tenant is admitted to possession pending a negotiation for purchase or lease (d) : or, where a person is suffered to reside rent free, or placed in possession in trust to permit the premises to be used for a specific purpose (e).

A tenancy on sufferance, which is a wrongful continuing in possession after the tenant's right to remain has ceased, may be considered for some practical purposes as, up to the receipt of rent by the landlord, a tenancy at will (f). But a landlord may maintain ejectment against a tenant by sufferance without demanding possession (g).

A mortgagor in possession has been considered to be strictly a tenant at will. The incidents of this tenancy differ, how-

(a) *Doe v. Cox*, 17 L. J. 3, Q. B., where a proviso in these words contained in a deed was held to create a tenancy at will, and not a tenancy from year to year.

(b) *Richardson v. Langridge*, 4 Taunt. 128.

(c) 2 Bla. Com. 147.

(d) *Goodtitle v. Herbert*, 4 T. R. 680 ; 8 T. R. 3 ; *Doe v. Stennet*, 2 Esp. 717 ; *Peacock v. Peacock*, 16 Ves. 57 ; see *Winterbottom v. Ing-*

*ham*, 7 Q. B. 617.

(e) *Rex v. Collett*, Russ. & Ry. 498, 525 ; *Doe v. Jones*, 10 B. & C. 718, 721 ; 5 M. & R. 616, 620, 752 ; *Revett v. Brown*, 2 Moo. & P. 12 ; 5 Bing. 7.

(f) See *Bishop v. Howard*, 2 B. & C. 100 ; 3 D. & R. 293.

(g) *Doe v. Brett*, Hurl. & W. 3 ; *Doe v. Turner*, 7 M. & W. 226 ; 9 M. & W. 643 ; 16 M. & W. 778.

ever, from those of a tenancy at will, and the subject is not within the scope of our present inquiry (*h*).

A servant who occupies a cottage and receives the use of it as part of his wages is not a tenant. The occupation is the occupation of the master, and the servant's right to retain the possession ceases upon his dismissal (*i*).

Such a tenancy may be determined by either party at any time and without any notice, as by a demand of possession by the landlord, or by the tenant quitting the farm (*k*). A demand of possession made upon the premises and addressed to the wife of an underlessee has been held sufficient to determine the tenancy (*l*). And the words "unless you pay me what you owe me I shall take immediate measures to recover possession of the property," have been held to be equivalent to a demand of possession (*m*).

So the death of either landlord or tenant, entry on the land by the landlord and committing acts of ownership, waste by the tenant, high treason and outlawry, have been held to determine this tenancy. Any act which is inconsistent either with an estate at will, or with an intention in the landlord, or in the tenant, to continue the tenancy will suffice to put an end to it (*n*).

But the exercise of the power to determine the tenancy must not operate unjustly to the injury of the other party. If the landlord should turn out the tenant after he has sown the land he may enter to take his crop; and, in all cases where the landlord determines the tenancy, the tenant shall have reasonable access to the land to remove his property (*o*). So if the landlord determine the tenancy between any of the periods of payment of rent he shall lose the fractional portion of rent due. But if the tenant determine the tenancy between

(*h*) See *Moss v. Gallimore*, 1 Doug. 279; *West v. Fritch*, 18 L. J. 50, Ex.

(*i*) *Hunt v. Colson*, 3 Moo. & S. 790. An agreement to allow a servant to occupy does not amount to a lease; see *Doe d. Hughes v. Derry*, 9 C. & P. 494.

(*k*) See *Doe d. Heming v. Brett*, Hurl. & W. 3.

(*l*) *Roe d. Blair v. Street*, 4 Nev.

& M. 42.

(*m*) 9 Bing. 356; 2 Moo. & S. 464.

(*n*) See Co. Litt. 55 *b*, n. (15); Cruise, Dig.; 1 Wils. 176; 7 M. & W. 226; 9 M. & W. 643; 1 Gale, 96; 2 C. M. & R. 120; 5 Tyrw. 753.

(*o*) 10 B. & C. 721; 5 Man. & Ry. 620.

any such periods he shall pay up to the expiration of the period. And this whether the rent be payable quarterly or half-yearly (*p*). But, although a tenant at will may have expended money in improving the property, this will give him no right to retain his tenancy after demand of possession (*q*).

A tenancy at will cannot be assigned or underlet; for, by the act of assigning or underletting, the tenant determines his will and puts an end to his estate (*r*).

A tenant at will, holding without any express agreement, is bound to cultivate his farm according to the ordinary rules of good husbandry, and is also bound to keep the house and farm buildings wind and water tight, so as to prevent waste or decay of the premises. He is not bound to do substantial and lasting repairs, such as new roofing, nor is he liable for injuries arising from accidental fire, or wear and tear of time, nor for injuries which have not happened through voluntary negligence (*s*).

(*p*) Com. Dig. Estates; 1 Salk. 262; 2 Salk. 413; 3 Salk. 222; 1 Ld. Raym. 702; 4 Mod. 79.

(*q*) *Richardson v. Langridge*, 4 Taunt. 128.

(*r*) 1 Inst. 57 *a*; 1 Doug. 283;

Cro. Eliz. 156.

(*s*) *Powley v. Walker*, 5 T. R. 373; Cro. Eliz. 777, 784; 2 Esp. 590; 5 C. & P. 239; 6 C. & P. 8; 7 C. & P. 327.



## CHAPTER II.

OF A TENANCY FROM YEAR TO YEAR, CREATED  
BY PAROL.

**Definition.**—How Created.—Payment of Rent.—Commencement and Termination of Tenancy.—Effect of Determination of Landlord's Estate.—Determination of Tenancy by Notice to Quit, by Disclaimer.

THE tenancy from year to year arises wherever a landlord lets lands, and a tenant takes them without stipulation as to the duration of the tenancy. It is the construction which the law puts upon the fact of the relation of landlord and tenant, unless there be some particular agreement between the parties to the contrary (*a*).

Formerly such tenancies were thought to be tenancies at will; but as it was found to be extremely inconvenient and unjust, that a tenant who occupied land should, after he had sown it, be turned out of possession without reasonable notice to quit; it was held that a general occupation was an occupation from year to year, and that the tenant should not be turned out of possession without reasonable notice to quit (*b*).

This reasonable notice, in the absence of any express agreement upon the subject, is settled to be half a year's notice, and it must expire at the period of the year at which the tenancy commenced (*c*). So that the tenancy always commences for a year certain; and at the expiration of the year, without notice given, goes on for another year certain; and thus until either the landlord or tenant shall give the half-year's notice to prevent the recommencement of the tenancy after the current year shall have expired (*d*).

A general letting by word of mouth, at an annual rent, will

(*a*) *Richardson v. Langridge*, 4 Taunt. 128; Com. Dig. Estates; 1 Salk. 346; 3 Salk. 223.  
(*b*) *Woodf. L. and T.* 153.  
(*c*) *Doe d. Henderson v. Char-*  
*nock, Peake*, 4; *Doe v. Watts*, 7 T. R. 83; 8 T. R. 3.  
(*d*) *Tomkins v. Lawrence*, 8 C. & P. 729.

be in all cases a tenancy from year to year, even though part of the farm should be in an open field state. Where a crop does not come to perfection in less than two years, as liquorice, madder, &c., it has been said that it might be otherwise (e); but this, if it be an exception, can but little affect the general proposition that a general letting at an annual rent creates a tenancy from year to year.

Even where a tenant who held under a lease, continues his occupation after the lease has expired, he becomes tenant from year to year immediately his landlord has received the first quarter's rent (f); but he was strictly tenant on sufferance until the landlord received the quarter's rent (g). Thus, in one case where a lease expired at Midsummer, the tenant refused to relinquish possession under the pretence that he was entitled to a notice to quit, and he continued in possession until Christmas and paid rent to that time. At Christmas he tendered the keys to his landlord, who refused to accept them. At the expiration of the next quarter the landlord brought his action for use and occupation, and recovered. It was held that the possession, and paying rent quarterly, showed a tenancy from year to year, which was still going on, not having been determined by a proper notice (h). But although upon proof of payment of rent quarterly, after the expiration of a demise the law will imply a tenancy from year to year, yet it is competent to either receiver or payer of such rent to prove the circumstances under which the payment was made, and by such circumstances to repel the legal implication.

The principle, that the payment of rent may be explained for the purpose of protecting parties from the legal consequences which would otherwise follow from such payments, is recognised by Buller, J., in *Williams v. Bartholomew* (i), and was allowed in *Rogers v. Pitcher* (j), and it is consistent with the general principles of the law.

In *Doe d. Lord v. Crago* (k), (which was ejectment by landlord, without notice to quit,) the landlord had received rent,

(e) *Doe d. Bree v. Lees*, 2 Bla. 1171; and see the argument in *Wigglesworth v. Dallison*, Doug. 201; 1 Smith, L. C. 305.

(f) *Doe d. Clarke v. Smaridge*, 7 Q. B. 957.

(g) *Right d. Flower v. Darby*, 1 T. R. 162; 3 D. & R. 293;

*Bishop v. Howard*, 2 B. & C. 100; and see *Doe d. Earl of Egremont v. Forwood*, 3 Q. B. 627.

(h) *Bishop v. Howard*, 3 D. & R. 293.

(i) 1 B. & P. 326.

(j) 1 Marsh. 541; 6 Taunt. 202.

(k) 6 C. B. 90.

but gave evidence for the purpose of showing that such receipt of rent had taken place under a mistake of fact, in respect of the determination of the lease which had been improperly concealed from him. The Court held that the jury were properly directed, that if such rent had been received in relation to any new agreement, the verdict should be for the defendant; but if the evidence offered, to explain the receipts on the part of the plaintiff, did establish that in point of fact the rent had been received in relation to the old lease, and not upon a new agreement, then the verdict should be for the plaintiff.

*Determination of Tenancy.* — In *Doe d. Clarke v. Smaridge* (1), it was decided that a tenancy from year to year, so long as both parties please, is determinable at the end of any year, the first as well as any subsequent year; unless in the creation of the tenancy the parties use expressions showing that they contemplate a tenancy for two years at the least.

The termination of a tenancy from year to year like all other matters connected with agricultural holdings will, in the absence of an express agreement between the parties, be governed by the custom of the country (m). Where the tenant of a yearly holding has by the custom of the country the privilege of retaining a part of the premises for particular purposes of husbandry, the original tenancy is continued as to that part by the custom (n).

No new tenancy is created by a mere agreement for an increase of rent, in the middle of the year of a tenancy (o); and if the tenant enter in the middle of a quarter, and afterwards pay up to the beginning of the succeeding regular quarter, and after that pay half-yearly, his tenancy commences from the regular quarter-day to which he paid up.

The death of the parties, does not terminate a tenancy from

(1) 5 Q. B. 842 n.; S. C. 7 Q. B. 957.

(m) In *Doe v. Snowden*, 2 Bla. 1225, it is said by the Court that if there is a taking from Old Lady Day (5th April), the custom of most countries would entitle the lessee to enter upon the arable land at Candlemas (2nd of February), to prepare for the Lent corn, without any

special words for that purpose; and this where the taking is upon a written agreement for seven years.

(n) *Beavan v. Delahay*, 1 H. Bl. 5; 11 Moo. 227; 3 Bing. 361. See *Doe d. Plumer v. Mainby*, 10 Q. B. 473.

(o) *Doe d. Monck v. Geekie*, 5 Q. B. 841.

year to year. If the tenant die, his personal representative will have the same interest in it which he himself had (*p*); and if the landlord die his heir will of course succeed to all his ancestor's rights over the land.

In the not uncommon case, however, of the landlord having only an estate for his own life, or for the life of another in the land, the tenancy expires with the estate of the landlord (*q*). A tenancy from year to year of glebe land is put an end to by the death of the incumbent (*r*); but a person who held glebe land as tenant to one incumbent, and continues in possession under his successor without disturbance, must be presumed to hold as tenant to the latter, and will remain tenant from year to year as in the former incumbency. It is to be remarked that in the case of *Doe v. Somerville* (*s*), in which this was so held, there had been no receipt of rent; but *Bayley, J.*, in delivering the judgment of the Court said, "We are of opinion that those defendants who were in possession of the premises as tenants before the commencement of the present incumbency were entitled to notice to quit. The occupiers had been in possession of the premises eight months after the date of the induction, without being disturbed; and after that lapse of time, we think the incumbent must be presumed to have recognised them as his tenants, and to have assented to the continuance of their tenancies upon the same terms as before."

In the recent case of *Doe v. Roberts* (*t*), the tenant for life died during the existence of a tenancy from year to year, and the persons entitled in remainder were infants. The executors, under the will of the tenant for life, received rent from the tenants as agents for the children. But it was held that no tenancy from year to year was created by their so doing. *Parke, B.*, said, "The tenancy from year to year which was created during the life of William Thomas ceased at his death, and the defendant then became tenant by sufferance only. Those entitled in remainder might have ejected

(*p*) *Doe d. Holcombe v. Johnson*,  
6 Esp. 10.

(*q*) *Doe d. Shore v. Porter*, 3  
T. R. 13; *Doe d. Plumer v. Mainby*,  
10 Q. B. 473.

(*r*) *Ludford v. Barber*, 1 T. R.  
86; *Doe v. Carter, Ry. & M.* 237;  
but see 9 D. & R. 100.

(*s*) 9 D. & R. 100.

(*t*) 16 M. & W. 778.

him immediately, unless they had done some act by which they made him tenant from year to year."

In this case it was held that there was no such act to create a tenancy, because an agreement by an agent cannot bind an infant, for an infant cannot appoint an agent (u).

That the acceptance of rent by the remainderman, whenever he is in a position to be bound by his own acts, is evidence of a continuing tenancy from year to year, is well established; and it has also been settled that the tenancy will in such case commence from the date of the first payment of rent to the remainderman. Thus, in *Roe v. Ward* (v), *Heath, J.*, said, "The defendant was tenant at sufferance on the death of the tenant for life; and the rent being paid on the 5th of April was evidence of an agreement to hold from that day."

And the tenancy will continue according to the terms and conditions of the former tenancy, whatever these may have been; for, said *Wilson, J.*, in the case last quoted, "The payment of rent was evidence of an agreement that he should continue to hold in the same manner as he did by the indenture, insomuch that if in the lease there had been covenants for particular modes of husbandry, and the defendant after the death of the tenant for life had neglected to perform them, the lessor of the plaintiff might have maintained an action against him, stated the covenants, and then averred an agreement to perform them according to the terms of the original lease; of which agreement the continuing to pay rent for two years together would have been good evidence."

In *Madden v. White* (x), it was said, by *Buller, J.*, that an infant heir succeeding during the existence of an agreement for a tenancy from year to year is bound by the agreement; for an infant cannot avoid a lease which is for his own benefit. But it was then unnecessary to decide this point, because "even supposing the agreement made by the infant to have been avoided, the parties must stand in the same situation as they did before that agreement was entered into. At that time the defendants held as tenants from year to year under

(u) *Miller v. Noden*, 2 Esp. 530.

(x) 2 T. R. 159.

(v) 1 H. Blac. 100.

a letting from the father, who could not have turned them out without giving them regular notice. Then they were no less entitled to the same notice when the lands came to the daughter's husband, because he was an infant."

When there is an existing tenancy from year to year, we have already seen that notice to quit must, in the ordinary course, be given in order to terminate that tenancy; and, until such notice has expired, the landlord cannot bring ejectment to recover his land, and the tenant cannot relieve himself of his liability to the rent (*y*).

*Disclaimer.*—There are cases, however, in which a tenancy from year to year is terminated otherwise than by notice to quit.

Thus, where the tenant does any act which amounts to a disavowal of the title of his landlord, by so doing he forfeits his tenancy, and may be ejected without notice (*z*). Where a tenant said, "I have no rent for you, for Mr. A. has ordered me to pay none," this was held to be evidence of a disclaimer of tenancy (*a*). Where a tenant refused to pay rent to the heir-at-law after the death of the landlord, saying that he should be ready to pay the arrears to any person who should be proved to be heir-at-law, but that he must decline taking upon himself to decide upon the claim made on him without more satisfactory proof in a legal manner (*b*), this was held to be a disclaimer, and the heir-at-law ejected the tenant without notice. So the words "You are not my landlord" (*c*), if spoken with the meaning that there was no relation of landlord and tenant between the parties, is a disclaimer. An attornment (*d*), an assertion by the tenant that he holds the land as his own and will pay no rent (*e*)—indeed any act or declaration showing a deliberate intention of disclaiming the relation of landlord and tenant—is a forfeiture of the tenancy (*f*).

(*y*) Buller's N. P. 96; 2 Esp. 717, 501; 1 Stark. 308; 7 T. R. 83; 8 East, 166.

(*z*) Bull. N. P. 96; *Doe v. Pasquali*, Peake, 196; Gow, 195.

(*a*) *Doe v. Pitman*, 2 Nev. & M. 672.

(*b*) *Doe v. Frowd*, 1 M. & P. 480; 4 Bing. 557.

(*c*) *Doe v. Long*, 9 Car. & P. 773.

(*d*) *Doe v. Grubb*, 10 B. & C. 816; 4 A. & E. 784.

(*e*) *Doe d. Phipps v. Gowen*, 1 Jur. 794.

(*f*) *Doe d. Phillips v. Rollings*, 4 C. B. R. 188; S. C. 17 L. J., C. P. 268.

A refusal to pay rent to the devisee under a will which is disputed is not a disclaimer (*g*).

The forfeiture occasioned by a disclaimer is waived by any subsequent act of the landlord recognizing the continuance of the tenancy, as receiving rent or distraining (*h*).

(*g*) *Doe v. Grubb*, 10 B. & C.  
816.

(*h*) *Doe v. Williams*, 7 Car. & P.  
322.

## CHAPTER III.

OF THE RIGHTS AND OBLIGATIONS ATTACHED BY LAW  
TO PAROL YEARLY TENANCIES.§ 1. *Quiet Enjoyment.*

Warranty by Landlord.—When Tenancy useless.—Fire.—No warranty that Premises shall be fit for the purpose contemplated by Tenant.

§ 2. *Obligation to pay Rent.*

Generally.—Period of Payment.

§ 3. *Tithe Rent-charge.*§ 4. *Landlord's Right to Distrain.*

Who may distrain.—What may be distrained.—Corn Crops.—Cattle.—Other Points.

§ 5. *Waste.*

Voluntary or Permissive.—What is voluntary Waste.—Remedy for.

§ 6. *Notice to Quit.*

Who may give.—Agents.—To whom given.—Length of Notice.—Description of Premises.—Notice must be certain as to intent.—Service.—Waiver of Notice.—Form of Notice.

§ 7. *Obligation to give up Possession.*

Generally.—Holding over.—Double Value.—Double Rent.—Recovery of Possession under County Courts Act.

§ 8. *Desertion of the Premises.*

Generally.—Statutable Provisions.—Forms.

§ 9. *Emblements.*

What are.—Who are entitled to.

§ 10. *Agricultural Fistures.*

A PAROL tenancy (a lease from year to year, or for any period not more than three years, as excepted by the second section of the statute of frauds,) may be as special in its terms as a written one (a). But we treat here of a naked parol tenancy.

The law annexes to the relation of landlord and tenant many rights and obligations. Thus, without any express covenant between the owner of the farm and the tenant to whom he lets it, the law will impose upon the owner the duty of

(a) *Lord Bolton v. Tomlin*, 5 Ad. & E. 864.



allowing the tenant quietly to enjoy the premises without let or hindrance ; and, upon the tenant, the duties of paying the rent reserved, keeping the farm in a proper state of repair, cultivating it in a husbandman-like manner, doing no waste, and rendering it up at the termination of his tenancy. These are material duties which the law considers to arise from the mere relation of landlord and tenant ; and when parties enter into that relation the law assumes, in the absence of some special proof to the contrary, that the observance of these duties was a portion of their agreement. The obligations of an agricultural tenant, as to repairs, cultivation, and waste, depend upon the custom of the country, and will be distinctly treated under that head. Upon the other obligations created by the law, I shall here briefly touch.

SECT. 1.—*Of Quiet Enjoyment.*

*Warranty by Landlord.*—The law implies a warranty by the landlord that the premises taken shall be quietly enjoyed.

If the landlord should be entitled to only an estate for life, and die during the tenancy, the tenant is doubtless liable to be evicted by the remainderman, without receiving any notice to quit. In such case he would be entitled to his emblements as against the remainderman, and would probably be entitled also to compensation from the executors of the landlord for the loss he had sustained by the interruption of his tenancy (a).

*When Tenancy Useless.*—It has been held that a tenant of a house from year to year may quit without any previous notice to his landlord, when the premises become unsafe and useless from want of repair, or unwholesome from want of sufficient drainage (b) ; and where a landlord, by his misconduct, justifies a tenant in an abrupt departure, he can only recover rent during the time there has been actual occupation (c). The same principle would of course be applied to agricultural holdings, if, by any act of the landlord, the land became useless. Cases might easily be put where a landlord, by the

(a) See *Shep. Touch.* 178 ; *St. Albans v. Shore*, 1 H. Bla. 270 ; *Phillips v. Fielding*, 2 H. Bla. 123 ; *Fraser v. Skey*, 2 Chit. 646.

(b) *Collins v. Barrow*, 1 Moo. & Rob. 112.

(c) *Kirkman v. Jervis*, 7 Dowl. 768.

management of his water-courses, or even perhaps by the excessive abuse of his power to preserve game, might entitle a tenant to determine his tenancy without notice. The peculiar circumstances of agricultural operations render it scarcely possible, however, that the exercise of such a right could be so advantageous to the tenant as quitting after a regular notice.

*Destruction by Fire, &c.*—The breach of the implied covenant for quiet enjoyment must be by some act of the landlord, or of some person claiming under him, in order to excuse the tenant. No act of the tenant himself, nor any act of God or the king's enemies will operate to that effect. Thus, if the farm-house and buildings are burnt down, and the farm becomes incapable of cultivation for want of them, the tenant must continue to pay the reserved rent until he can relieve himself by the regular notice (c). So, where, in an action of debt for rent, the tenant pleaded that Prince Rupert, an alien born, with an hostile army had entered upon the premises and expelled him out of possession, the Court held that he was still bound to pay the rent (d).

The relation of landlord and tenant does not imply any covenant, on the part of the former, that the land shall be fit for the purposes contemplated by the tenant. Therefore, if one take the eatage of a piece of land at a certain rent, he cannot resist payment because the pasture proves poisonous, and some of the animals with which he stocked it died from having eaten of it (e).

(c) *Izon v. Garton*, 7 Scott, 537; 5 Bing. N. C. 501.

(d) *Paradine v. Jarne*, Aleyn, 26; Style 47.

(e) *Sutton v. Temple*, 12 M. & W. 52; *Hart v. Windsor*, 12 M. & W. 68; *Surplice v. Farnsworth*, 8 Scott's N. R. 307. The Court was probably not aware that the point decided in *Sutton v. Temple* had been considered and decided in a directly contrary manner by the greatest civilian of the age of Alexander Severus. The law of

Ulpian, in the Pandects, runs as follows:—"Si quis dolia vitiosa ignarus locaverit, deinde vinum effluxerit, tenebitur in id, quod interest: nec ignorantia ejus erit excusata. Et ita Cassius scripsit. Aliter atque si saltum pascuum locasti, in quo herba mala nascebatur: hic enim si pecora vel demortua sunt, vel etiam deteriora facta, quod interest præstabitur, si scisti, si ignorasti, pensionem non petes."—Pandects, Book xix. Tit. 2, L. 12, s. 1.

SECT. 2.—*Obligation to pay Rent.*

Mere occupation as a tenant at an uncertain rent entitles the landlord only to sue for rent upon a *quantum valebat* (f). But where the rent has been ascertained by agreement between the parties, or by a single payment, the amount becomes fixed, and the landlord's power to distrain attaches to it (g).

If the period for payment of rent has not been expressly fixed by the parties, it will be ascertained by the custom of the country; and where rent was to be payable by a parol demise, from the Lady-day following, evidence of the custom of the country was admitted, to show that, by Lady-day, old Lady-day was intended (h).

SECT. 3.—*Tithe Rent-charge.*

In the absence of any special agreement to the contrary, the tithe rent-charge is payable by the landlord; and any tenant who pays it is entitled to deduct it from his rent (i).

The Commutation Act of 6 & 7 Will. IV. gives no personal remedy for this rent-charge. It may be recovered when twenty-one days in arrears, by distress to the extent of two years' arrears (sect. 81); or, in the absence of any sufficient distress, the arrears of rent-charge may, when forty days in arrear, be assessed upon inquisition, and the owner of the rent-charge may receive possession of the lands and retain the same till the rent-charge and all costs of proceedings and cultivation have been paid (sect. 82). And, by 5 & 6 Vict. c. 54, s. 12, a tithe rent-charge owner in possession, under the provision above quoted, may let the land for one year in possession.

By sect. 85 of the Commutation Act, it is provided, that any lands in the parish occupied under the same landlord by

(f) *Hamerton v. Stead*, 5 D. & R. 206; 3 B. & C. 478. But there may be an occupation without a tenancy; see *Rumball v. Wright*, 1 C. & P. 589.

(g) "It is a maxim in law, that no distress can be taken for any services that are not put into certainty

nor can be reduced to any certainty; for 'id certum est quod certum reddi potest.'" Co. Lit. 96 a.

(h) *Doe d. Hall v. Benson*, 4 B. & Ad. 588.

(i) See stat. 6 & 7 Will. IV. c. 71, s. 80.

the occupier of the lands upon which a tithe rent-charge is in arrear, may be distrained upon for such arrears; and even lands of which such occupier is owner, are included in the same liability.

Sect. 84 contains particular provisions for recovery of rent-charges from Quakers.

The tithe rent-charge is payable half-yearly, but the days of payment are fixed by the acts 6 & 7 Will. IV. c. 71, s. 67, and by the 2 & 3 Vict. c. 62, s. 11, to be either the 1st January and the 1st July, or the 1st April and the 1st October.

It is an important consideration, that a half-year's tithe rent-charge becomes due a few days after the out-going tenant has quitted his farm. The law attaches no personal liability. His farming stock once removed, the out-going tenant is released altogether from this payment in the absence of some special covenant with his landlord; and the in-comer's stock may be distrained for two years' arrears immediately upon his entering upon the farm.

It has been sometimes considered that these provisions were not unadvisedly inserted by the legislature, and that the intention was to drive the landlord to add the tithe rent-charge to the rent. The inconveniences which must arise from any other course, in the absence of very stringent covenants to compel the tenant to pay, will be obvious upon a consideration of the sections above quoted. A landlord, who may since the commutation have let a farm from year to year without any particular provision as to tithes, may hereafter find the receipts for two years', or possibly for six years', tithe rent-charge, set off against his demand of rent. The inconveniences which these provisions impose upon landlords who allow their tenants to pay tithe rent-charges have scarcely yet become fully known in practice. The easy remedy is to reserve the tithe rent-charge as part of the rent, and to let the land tithe free.

#### SECT. 4.—*Landlord's Right to distrain.*

*Who may distrain.*—A distress may be taken for rent in arrear (k) within six years, if the rent shall have become due,

(k) See Gilb. on Distress.

or after an acknowledgment of the same in writing (*l*). The landlord will not be deprived of this remedy by taking any security. A bond or a promissory note (*m*), or even an agreement to take interest upon the arrears, will not deprive the landlord of his right to distrain (*n*). The reason assigned for this rule is that "the rent is of a higher nature, and the acceptance of a security of an unequal degree is no extinguishment of the claim" (*o*).

But to give a landlord this right to distrain, there must be an actual tenancy at a fixed rent. In cases where a party is in possession under an agreement for a lease, no fixed rent is due for the occupation, but only a compensation in the nature of rent (*p*); there is no remedy therefore by distress, unless some circumstances occur to imply a tenancy, and to fix the amount of rent. Payment of rent has been always held sufficient for this purpose, for a person in possession under an agreement for a lease is, after payment of rent, a tenant from year to year upon the terms of the agreement (*q*).

But where a tenant entered under an agreement for a lease at 25*l.* a year, the landlord to complete certain erections, and after some years' occupation, without any rent paid or the completion of the erections, the landlord distrained for the arrears, at the rate of 25*l.* per annum; it was held that there was no demise at a certain rent, and that the landlord therefore had no right to distrain (*r*).

An assignor of a lease cannot distrain without a special clause, to that effect, but if he underlet reserving only one day his power of distress continues; and a tenant from year to year, underletting from year to year, has a reversion sufficient to give him the power of distress: a landlord cannot distrain after his interest in the premises is expired (*s*).

*What may be distrained.*—All chattels and personal effects

(*l*) Stat. 3 & 4 Will. IV. c. 27, s. 322; see *Daniel v. Gracie*, 6 Q. B. 145.  
2; *Grant v. Ellis*, 9 M. & W. 113;  
*James v. Salter*, 4 Sco. 168.

(*m*) *Davis v. Gyde*, 2 Ad. & E. 361; *Cox v. Bent*, 5 Bing. 185;  
623. *Doe d. Oldershaw v. Breach*, 6 Esp. 107.

(*n*) *Skerry v. Preston*, 2 Chit. 107.  
Rep. 245. (*r*) *Regnart v. Porter*, 7 Bing. 451; 5 Moo. & P. 370.

(*o*) Rol. Abr. tit. Extinguishment. 451; 5 Moo. & P. 370.  
(*p*) *Hegan v. Johnson*, 2 Taunt. 148; *Dunk v. Hunter*, 5 B. & Al. 2 Wils. 375.  
(*q*) *Knight v. Bennett*, 3 Bing. 361; *Cox v. Bent*, 5 Bing. 185;  
*Doe d. Oldershaw v. Breach*, 6 Esp. 107.  
(*s*) *Gilb. Distress; Cooper's case*, 2 Wils. 375.

found upon the premises may be distrained for rent, whether they be the effects of a tenant or of a stranger. The exception is things in actual use in the hands of a person at the time (*t*).

As to distraining the cattle of a stranger, it may be well to mention the recent case of *Horsford v. Webster* (*u*), where a landlord of a farm was privy to an agreement for the sale by his tenant of some estate of pasture to a third person, and it was a condition of the agreement that the amount produced by the sale should be paid to the landlord in reduction of arrear of rent. The stranger put in his cattle to consume the estate, and the landlord distrained them, but the Court held that there was an implied contract between the landlord and the stranger not to distrain the cattle.

In *Knight v. Bennett* (*v*), the tenancy determined at Michaelmas, the tenant retaining the barns and yards to thrash his corn and to consume his straw, according to the common custom of the country. The tenant being about to remove his straw in disregard to the custom, the landlord obtained an injunction to restrain him from removing corn in the straw. While the corn remained on the premises by force of this injunction the landlord distrained for rent due at Michaelmas. The Court held that the distress was good, that the holding by the tenant under the custom, though involuntary, was a prolongation of the original term.

*Corn Crops.*—At common law, corn and farm produce generally could not be distrained, but this was long since found inconvenient, and has been remedied by statute.

The first statute upon this subject is the 2 Will. & M. sess. 1, c. 5, which enacts (sect. 8) that it shall be lawful for any <sup>landlord</sup> having arrear of rent to seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or other-

(*f*) There are many other exceptions, such as goods of a third person, which are upon a tenant's premises in the way of his trade; goods in the hands of a factor; goods, the property of guests at an inn; fixtures; goods in the custody of the law, &c. &c.; but it is not within the scope of this work to do more than state the general princi-

ples of the law of landlord and tenant, just sufficiently to classify under them the provisions that especially affect agricultural tenancies.

(*u*) 1 Gale, 1; 1 C. M. & R. 696.  
(*v*) 11 Moo. 222; 3 Bing. 361; and see *Beavan v. Delahay*, 1 H. Bl. 5; and *Lewis v. Harris*, 1 H. Bl. 7, n.

wise upon any part of the land or ground charged with such rent, and to lock up or detain the same in the place where the same shall be found, until the same shall be replevied or sold.

By stat. 11 Geo. II. c. 19, ss. 8, 9, the landlord may take and seize as a distress for arrear of rent all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever growing upon any part of the estate demised, and the same may cut, gather, make, cure, carry, and lay up when ripe in the barns or other proper place on the premises; and if there should be no barn or proper place on the premises then in any other barn or proper place which he shall procure as near as may be to the premises; and in convenient time appraise, sell, or otherwise dispose of the same towards satisfaction of the rent, and of the charges of such distress, appraisement, and sale, the appraisement thereof to be taken when cut, gathered, cured, and made, and not before. Provided that notice of the place where such distress shall be lodged shall in one week after the lodging thereof be given to the tenant, or left at the last place of his abode, and if the tenant shall pay or tender the arrear of rent and costs of the distress before the corn, &c. be cut, the distress shall cease, and the corn, &c. be delivered up.

It may be convenient here also to mention another legislative provision as to corn crops, which relates to all cases of execution against the tenant. By stat. 56 Geo. III. c. 50, s. 1, it is enacted, "that no sheriff shall by virtue of process carry off, or sell, or dispose of for the purpose of being carried off from any lands let to farm, any straw thrashed or unthrashed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or sea-weed, in any case whatsoever; nor any hay, grass, or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables being produce of such lands, in any case where according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, &c. ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon, and of which covenants or agreements such sheriff shall have received a written notice before he shall have proceeded to sale."

The act further provides that the tenant shall give notice to the sheriff of the existence of the covenants, and of his landlord's name and address; that the sheriff shall give notice to the landlord, and shall ultimately sell the produce, subject to the terms of the covenant or of the custom of the country as the case may be; that where crops are so sold the sheriff shall assign to the purchaser the use of barns, buildings, yards, and stables for the purpose of consuming such produce: and that cattle put in to consume such produce, shall be protected from distraint.

It is also provided, that the assignees of a bankrupt shall not have greater powers of selling produce off the farm than the bankrupt had. When crops have been taken in execution and sold, but remain on the premises a reasonable time for the purpose of ripening and being reaped (*x*); they are not distrainable by the landlord for rent become due after the taking in execution (for goods in the custody of the law are not distrainable). Even although the purchaser has not entered into an agreement to consume the produce on the farm (*y*). But if the crops remain an unreasonable time uncut after the corn is ripe, it seems that the landlord's power of distress revives (*z*). If a landlord seize hay or straw under distress, he shall sell it to be consumed on the premises, if the covenant or the custom dictate that practice (*a*).

Where there is an existing tenancy (*b*) and rent in arrear, the sheriff cannot remove crops or other chattels—for crops are chattels for this purpose (*c*), until the arrear or one year's rent has been paid (*d*). And the sheriff is not bound to pay the rent due, but may refuse to levy until the rent has been paid (*e*). The statute extends to forehand rent, payable in advance (*f*).

(*x*) *Clarke v. Calvert*, 6 Moo. 114; *Owen v. Leigh*, 3 B. & Al. 470.

(*y*) *Wright v. Dewes*, 1 Ad. & E. 641.

(*z*) *Peacock v. Purvis*, 5 Moo. 79; 2 B. & B. 362; *Wharton v. Naylor*, 17 L. J. 278, Q. B.

(*a*) *Abbey v. Petch*, 8 M. & W. 419; *Roden v. Eyton*, 18 L. J.

C. P. 1.

(*b*) *Hodgson v. Gascoigne*, 5 B. & Al. 88.

(*c*) *Glover v. Coles*, 1 Bing. 6.

(*d*) Stat. 8 Anne, c. 14.

(*e*) *Cocker v. Musgrove*, 9 Q. B. 223.

(*f*) *Harrison v. Barry*, 7 Pri. 690.



*Cattle*.—The cattle of the tenant may be distrained for rent like any other chattels; so may the cattle of a stranger which come upon the farm as trespassers by the negligence of their owner. So when they have come upon the farm through insufficiency of fences, but not until they have been on the premises for a night and a day without pursuit made by the owner, notice having in the mean time been given to the owner. A horse carrying corn to market, and put up in a private stable to bait, is privileged from distraint. So are cattle driven to a market or fair, and put in to pasture on the way for one night (*g*). But, generally, cattle on the farm to agist may be distrained. After the distrainer enters upon the farm to distrain, cattle may not be driven off, or the distrainer may follow them and distrain them off the land (*h*). Chasing a distress over a boundary is a continuance of the taking (*i*).

By stat. 11 Geo. II. c. 19, every landlord may take and seize as a distress for arrears of rent any cattle or stock of his tenant feeding or depasturing upon any common appendant or appurtenant, or any ways belonging to any part of the premises demised.

The sheep of the tenant and the beasts of the plough (which, like the tools and utensils of a man's trade, are the materials of husbandry to plough and manure the land) may not be distrained either by the king or by any other while there is another sufficient distress.

This privilege, granted by the 51 Hen. III. st. 4, is not much favoured by the Courts. Thus, where the landlord distrained all the tenant's effects, including his beasts of the plough, and upon the sale it was found that the other effects would have satisfied the arrears and costs, yet it was held that the distress was not illegal if there was reasonable ground to suppose that without taking the beasts of the plough there would not have been a sufficient distress (*k*). Where beasts of the plough are taken in a lawful distress, the sale of them need not be postponed to that of other goods. Beasts of the

(*g*) But see 2 Wm. Saund. 290,  
n. 7.

(*h*) Gilb. Distress.

(*i*) *Walter v. Rumball*, 1 Ld. Raym.

5; 12 Mod. 76.

(*k*) *Jenner v. Yolland*, 6 Pri. 5;  
2 Chit. Rep. 167.

plough may be distrained in preference to growing crops (*l*); and a thrashing machine, not being a fixture, is liable to distress when not in actual use (*m*).

Animals *feræ naturæ* cannot be distrained; but, where kept in a private inclosure for the purpose of trade or profit, it has been held in some cases that this reduces them to the condition of other stock. So deer thus inclosed have been distrained for rent (*n*).

*Other points.*—The statutable provision in cases of fraudulent removal (11 Geo. II. c. 19)—for the costs of distresses under 20*l*. (57 Geo. III. c. 93); the necessity that the distress be made after sunrise and before sunset; the obligation upon the distrainer to enter peaceably, and his right to break open inner doors; the inventory; the notice; the removal of the goods; the consent of the tenant to retain possession beyond the five days;—all these are parts of the general law relating to distress, which include landlords and husbandmen only as they include all other subjects.

#### SECT. 5.—*Waste.*

The law imposes upon the tenant, without any special agreement, an obligation to cultivate the farm in a husbandlike manner, and (whether at will, from year to year, or for years) not to commit waste.

The obligations to cultivation of the farm will be considered under the head of "Customs of the Country;" but it may be convenient here to mention the principal provisions of the law which forbids the tenant to commit waste. Waste is either voluntary or permissive (*o*). The first is an act of commission, such as by pulling down a house; the second is an act of omission, such as suffering it to fall into disrepair.

A tenant from year to year or for years is, in the absence of express agreement, liable only for voluntary waste (*p*); and therefore it is not waste to leave the land uncultivated. Indeed, it has been held, that this is neither wilful nor per-

(*l*) *Piggott v. Birtles*, 1 M. & W. 441.

(*m*) *Fenton v. Logan*, 3 Moo. & S. 82; 9 Bing. 67.

(*n*) *Gilb. Distress*, (4th edit.) p. 49, and the cases there cited.

(*o*) Co. Litt. 53 a.

(*p*) *Gibson v. Wells*, 1 N. R. 290; 2 Sm. 677; *Herne v. Bembow*, 4 Taunt. 764; *Martin v. Gilham*, 7 Ad. & E. 540; 2 Nev. & P. 568.

missive waste at common law (*q*), although undoubtedly it would be bad husbandry (*r*).

To cut down timber or fruit trees in an orchard, or top trees, or do any act by which they may decay, or after cutting underwood, to suffer the young germains to decay, to remove or injure a quickset fence, are all acts of waste, saving this, that it is not waste to take convenient wood to repair the walls, pales, fences, hedges, and ditches, as the tenant found them, but not to make new ones. The tenant may take also ploughbote, firebote, and other housebote; and this although lessor or lessee covenant to repair (*s*). Yet he may not sell or exchange trees for money or more convenient timber, although he apply the produce to repairs (*t*).

It has been held to be waste if a tenant build a new house, or rebuild the old house larger than before (*u*), because the larger house is of more charge to repair (*x*).

If the tenant sow the land with any pernicious crop (*y*), or convert arable to wood or wood to arable, or meadow or pasture to arable, or meadow to orchard or hop-garden (though it be a melioration), or a hop-garden to tillage (*z*); or if he open new pits to dig gravel, lime, clay, brick-earth, stone, &c. (*a*); or if he destroy the stock of a dovecote, warren, park, or fishpond, not leaving a sufficient stock, all these acts will be waste (*b*).

But it is no waste to convert pasture to tillage for the improvement of the soil (*c*). But, where a tenant ploughed up old meadow, the tenant cannot give in evidence under the general issue of no waste done, that the meadow was ploughed according to the custom of the country, and to ameliorate; for the ploughing is waste, and the reason for altering the character of the land must be pleaded by way of justification (*d*).

(*q*) *Hutton v. Warren*, 1 M. & W. 472.

(*r*) Com. Dig. tit. Waste, D, 4.

(*s*) Com. Dig. tit. Waste; Co. Lit. 54 b.

(*t*) Co. Lit. 53 b.

(*u*) Co. Lit. 53 a.

(*x*) 2 Rol. Abr. 815, l. 35.

(*y*) *Pratt v. Brett*, 2 Madd. 62.

(*z*) Co. Lit. 53 a; Com. Dig. tit. Waste, D, 4.

(*a*) See *Viner v. Vaughan*, 2 Beav. 446.

(*b*) Com. Dig. tit. Waste.

(*c*) *Ibid*.

(*d*) *Simmons v. Norton*, 3 Moo. & P. 645; 7 Bing. 640.

It is waste for an outgoing tenant to plough up strawberry-beds in full bearing, although when he entered he paid for them on a valuation to a person who occupied the premises before him, and although it may have been usual for strawberry-beds to be appraised and paid for as between outgoing and incoming tenants (*e*).

If a tenant be committing waste, Chancery will prevent him by injunction (*f*), or an action on the case may be brought. This action may be brought by a landlord against a tenant after the expiration of his tenancy, as well as covenant for the breach of covenants contained in his lease (*g*); and it may be brought for acts done by a tenant while holding over after the expiration of a notice to quit (*h*).

#### SECT. 6.—*Of the Notice to quit.*

We have already seen that the ordinary determination of a tenancy from year to year is by a six months' notice to quit (*i*).

The notice to quit may be by parol (or word of mouth) where the tenancy was created by parol (*j*), although it is obviously more prudent to deliver a formal notice in writing. It should be signed by the party intending to determine the tenancy. But it should not be witnessed; for then it can only be proved by calling the person who witnessed it, or by other means, after accounting for his absence (*k*).

*Who may give.*—It may be signed by one of two joint tenants, or by one of a firm of partners, or by an agent duly authorized (*l*); but the joint tenant, partner, or agent, must sign on behalf of the others as well as himself; and, indeed, it is much safer to have the notice signed by all the joint tenants, or by an agent duly authorized by all of them (*m*).

(*e*) *Wetherell v. Howells*, 1 Camp. 227.

(*f*) *Goring v. Goring*, 3 Swanst. 661; *Pratt v. Brett*, 2 Madd. 62.

(*g*) *Kinbyside v. Thornton*, 2 Bla. 1111.

(*h*) *Burchell v. Hornsby*, 1 Camp. 360.

(*i*) *Ante*, p. 5.

(*j*) *Timmins v. Rawlinson*, 3 Burr. 1603; *Doe v. Crick*, 5 Esp. 196;

*Doe v. Pearce*, 2 Camp. 96.

(*k*) *Doe v. Durnford*, 2 M. & S. 62.

(*l*) *Doe v. Hulme*, 2 Man. & Ry. 433; *Doe v. Somerset*, 1 B. & Ad. 135; *Doe v. Hughes*, 7 M. & W. 139; *Goodtitle v. Woodward*, 3 B. & A. 689.

(*m*) See *Doe v. Crick*, 5 East, 491; 2 Marsh. 83; 5 Esp. 149; 3 Taunt. 120.

*Agents.*—Every agent to whom such power is intended to be delegated should be armed with a written authority to give notices to quit; for, although it was held, in the case of a receiver of the Court of Chancery who had a general authority to let the lands to tenants from year to year, that such authority carried with it a power to determine such tenancies by regular notices to quit (*n*), yet there are many cases in the books in which the authority of the agent to give the notice has been much questioned upon the trial of an ejectment brought to turn the tenant out after the expiration of the notice (*o*). The current of authorities however is, in accordance with the case of the receiver, that although a mere agent to receive rents has no power to give a notice to quit, yet that an agent to receive rents, *and let*, has power to determine the tenancy (*p*).

A notice to quit must be such that the tenant may safely act upon it at the time of receiving it. Therefore, a notice by an unauthorized agent cannot be made good by an adoption of it by the principal after the proper time for giving it (*q*).

*To whom given.*—It is necessary that the notice be given to the person who is the landlord or the tenant (as the case may be) of the person giving the notice, and that the service be made upon him in his character of landlord or of tenant (*r*).

Where two tenants hold premises in common, a notice to quit to one of them is sufficient to determine the tenancy (*s*). But, where the farm has been underlet, a notice to the under-lessee from the first lessor is not a good notice (*t*).

A notice to the bailiffs of a corporation is not a good notice, for the corporation is the tenant; and, although the notice may be served upon the officers of the corporation, it must not treat the officers as tenants (*u*).

Where A. had been tenant of the farm, and upon his leaving it B. took possession, it was held that, in the absence of any evidence to the contrary, it might be presumed that he came

(*n*) *Doe v. Read*, 12 East, 57.

(*o*) See 10 B. & C. 626; 5 M. & R. 357; 3 Bing. N. C. 677; 4 Sco. 396.

(*p*) *Doe v. Goldwin*, 1 Gal. & Dav. 436; 2 Moo. & R. 56.

(*q*) *Doe d. Lyster v. Goldwin*, 2 Q. B. 143.

(*r*) *Doe d. Matthewson v. Wright-*

*man*, 1 Esp. 5.

(*s*) *Doe d. Macartney v. Crick*, 5 Esp. 196.

(*t*) *Pleasant d. Hayton v. Benson*, 14 East, 234; *Roe v. Wiggs*, 2 N. R. 330.

(*u*) *Doe d. Carlisle v. Woodman*, 8 East, 227.

in as the assignee of A., and that notice to quit was rightly given to B. (x)

Where a tenant from year to year died, and a regular notice to quit was served on the widow who remained in possession, it was held that the landlord might recover on this notice, unless it were shown that some other person and not the widow was the executor or administrator of the tenant, and that it was not incumbent on the landlord to show that the widow was either executrix or administratrix. But if it be shown that there are executors or administrators other than the widow the notice would be insufficient to determine the tenancy (y).

It is not necessary that the notice to quit should be directed to the tenant in possession, if proved to have been delivered to him in proper time (z).

If notice to quit be directed to the tenant by a wrong Christian name and he do not send it back, it is a waiver of the misdirection, especially if there was no other tenant of the name (a).

*Length of Notice.*—The notice must be given half a year before that period of the year at which the tenancy commenced. If the tenancy commenced at Lady-day the notice must be given before ~~Midsummer~~<sup>Michaelmas</sup>; if at Michaelmas, the notice must be given before ~~Christmas~~<sup>Michaelmas</sup>. Six months' notice is not sufficient; it must be in every case a notice of half a year (b).

This notice may be given at any time before the expiration of the first half-year of the tenancy, and in that case the tenancy will terminate with the first year (c).

But a tenancy from year to year, and so on from year to year until the tenancy thereby created shall be determined by notice is a tenancy for two years certain (d).

Where the tenancy from year to year arises from accepting

(x) *Doe d. Morris v. Williams*, 6 B. & C. 41; 9 D. & R. 30.

(y) *Rees d. Mears v. Perrott*, 4 C. & P. 230; *Doe d. Shore v. Porter*, 3 T. R. 13.

(z) *Doe d. Matthewson v. Wrightman*, 4 Esp. 5.

(a) *Doe d. Spiller*, 6 Esp. 70; but see *Doe v. Mitchell*, 1 Jur. 795.

(b) 3 Wils. 25; 4 Esp. 198; 6 Esp. 53; 6 Bing. 574; 4 Moo. & P. 391.

(c) 1 Jur. 960.

(d) 9 Ad. & E. 658.

rent after the expiration of a lease, the notice should expire on the day on which the lease expired (*e*).

If the notice state the time at which the tenancy will end that statement must be correct. Thus where a tenant held from New Michaelmas, and the notice expressed to be for Old Michaelmas, although it was in time for New Michaelmas, yet it was held bad (*f*). But if the notice had been for Michaelmas, without specifying whether New or Old Michaelmas, it would have been good for either (*g*). Where a landlord gave a notice on the 27th September, to quit "at the expiration of the term for which you hold the same;" evidence was admitted to show that the general custom of the country was Lady-day tenancies (*h*).

If there be any doubt as to the commencement of the tenancy from year to year the notice should always be to quit at the end of the year of tenancy, which shall expire one half-year from the time of service of the notice (*i*).

The books abound in cases wherein notices have either been held insufficient by reason of an error in the statement of the termination, or have been sustained because the intention of the person giving the notice was evident, although the expression of that intention was erroneous. It would exceed our limits to set forth these cases here, but the principle is that the Court will look at the intention of the parties, and will if possible construe the notice according to that intention (*k*).

Usually, in agricultural holdings, although different portions of the farm are entered upon at different times, the custom of the country leaves no doubt as to when the tenancy commences. Cases have occurred, however, in which this question has been disputed, and the rule is that the notice must

(*e*) *Doe v. Lines*, 17 L. J. 108, Q. B.

(*f*) 11 East, 312; 8 Bing. 235; 1 M. & S. 380.

(*g*) *Doe d. Willis v. Perrin*, 9 C. & P. 468. In that case the notice was to deliver up possession on St. Michael's day next. *Per Parke, B.*, "This is good notice for either old or new Michaelmas. *Prima facie* it would be for new Michaelmas, but if the holding was from

old Michaelmas this notice would do for that also;" see also 1 Esp. 198; Peak. Ad. Ca. 194; 2 Camp. 256, 257, n. But see 11 East, 312; and 8 Bing. 235.

(*h*) Adams on Ejectment, 3rd ed. 139.

(*i*) 2 Esp. 589; see the form, post.

(*k*) 7 T. R. 63; 3 D. & R. 507; 4 D. & R. 249; 1 Chit. Rep. 116; 5 Ad. & E. 354; 7 M. & W. 139.

be given to quit at the period at which the tenant entered upon that part of the premises which forms the principal subject of demise (*l*). In a farm the land and not the house is the principal subject of demise (*m*). Where a tenant entered upon the arable at Candlemas, but the buildings and pastures at May-day, Candlemas was held to be the time for which the notice should have been given (*n*). The times for payment of rent will, however, generally determine this question. Thus, where the tenant took under agreement to enter on the tillage land at Candlemas, but upon the house and the rest of the land and premises at Lady-day, and to quit according to the times of entry, and the rent was reserved half-yearly, at Michaelmas and Lady-day, it was held that a notice delivered half a year before Lady-day was good, the taking being in substance from Lady-day, with a privilege to enter at Candlemas for ploughing, &c. (*o*).

There are occasional instances in which the custom of the country prescribes a notice, differing from that required by the common law, and it seems that a special custom to this effect will be valid (*p*).

*Description of Premises in Notice.*—The notice must contain such a description of the premises that the party to whom the notice is given may not be misled as to the premises intended. If the meaning be plain a misdescription or insufficient designation is not material (*q*).

Thus, where a farm consisting of the Town Barton and the Shippen Barton was leased for twenty-one years, with power reserved to determine the tenancy at the end of fourteen years, on giving two years' previous notice, and the landlord at the proper time gave notice to the tenant to quit "Town Barton, &c., agreeably to the terms of the covenant between us on the expiration of the fourteenth year of your term:" this was held a sufficient description of the farm (*r*).

So where lands and tithes are held together the houses,

(*l*) 11 East, 498.

(*m*) 7 M. & W. 139.

(*n*) 2 East, 384, n.

(*o*) 5 East, 120; 2 Sm. 255.

(*p*) See *Brown v. Burtinshaw*, 7 D. & R. 603; *Doe d. Henderson v. Charnock*, Pea. 4; *Tiler v. Leed*,

1 Skin. 649.

(*q*) *Doe d. Cox v. —*, 4 Esp. 185; *Doe d. Armstrong v. Wilkinson*, 4 P. & D. 323; 12 Ad. & E. 743.

(*r*) *Doe d. Rodd v. Archer*, 14 East, 245.



lands, and premises, with the appurtenants, will include the tithes (*s*).

A notice to quit part of the premises let together would be bad (*t*).

*The Notice should be certain in its Intent.*—It should convey a clear intention on the part of the landlord or tenant to determine the tenancy. Thus, a notice by a grantor of a licence to mine, that “unless the grantee kept a certain number of miners at work as he was bound to do,” the grantor would re-enter, was held to be bad as a notice (*u*). The words “I desire you to quit possession on Lady-day next, or I shall insist upon double rent,” were held sufficient: the latter words being construed by the Court to be only added by way of threat of the consequence of holding over possession (*x*).

*Service of Notice.*—Personal service is not necessary, but it must be proved to the satisfaction of the jury that the notice came to the hands of the landlord, or of the tenant to whom the notice is intended to be given (*y*).

The leaving a notice without explanation with a servant at a tenant's house was held insufficient. But if the nature of the document was explained at the time to the servant it is strong presumptive evidence that the master received it (*z*). And it appears to be now held that the delivery of a notice to a servant is *prima facie* proof of good service (*a*). Notice to quit served upon the tenant's wife on the premises is good service (*b*).

*Waiver of Notice.*—The landlord waives his notice by the receipt of rent accrued due subsequent to the expiration of the notice, if such receipt is without protest by the landlord, and without fraud or contrivance on the part of the tenant.

(*s*) *Doe d. Morgan v. Church*, 3 Camp. 71.

(*t*) *Doe d. Rodd v. Archer*, 14 East, 245.

(*u*) *Muskett v. Hill*, 7 Sco. 855; 5 Bing. N. C. 694.

(*x*) *Doe d. Matthews v. Jackson*. 1 Doug. 175; *S. P. Doe d. Lyster v. Goldwin*, 2 Q. B. 143.

(*y*) *Jones d. Griffith v. Marsh*, 4

T. R. 464; *Alford v. Vickery*, 1 C. & M. 280; *Doe d. Buross v. Lucas*, 5 Esp. 153.

(*z*) 4 T. R. 464.

(*a*) *Doe d. Neville v. Dunbar*, Moo. & M. 10, *per* Abbott.

(*b*) *Doe d. Blair v. Street*, 2 Ad. & E. 329; *Smith v. Clark*, 9 Dowl. 202; *Pulteney v. Shelton*, 5 Ves. jun. 261, n.

The receipt of rent is, however, only *prima facie* proof of the acquiescence of the landlord in the continuance of the tenancy, and may be rebutted by any circumstances which disprove such acquiescence (c).

In the same way distraining for rent accrued after the expiration of a notice to quit is a waiver of the notice (d).

Giving a second notice is generally a waiver of the first, but this is a presumption which has many exceptions (e).

The allowing a tenant to continue in possession of the farm conditionally upon the landlord not being able to find a tenant at a higher rent, or conditionally upon his not being able to sell the farm is no waiver of a notice to quit (f).

*Form of Notice.*—The usual forms of notices to quit are as follow :—

*Common Form from Landlord to Tenant.*

To Mr. (the tenant).

I hereby give you notice to quit and deliver up the premises which you now hold of me, situate at in the county of , on the day of next, or at the expiration of the current year of your tenancy.

Dated the day of 185 .

Yours, &c.  
(the landlord).

When the commencement of the tenancy is uncertain, the following form may be adopted (see *Hurst v. Horn*, 6 M. & W. 393) :—

To Mr. (the tenant).

I hereby give you notice to quit, and deliver up to

(c) *Doe d. Ash v. Calvert*, 2 Camp. 387; and see 6 T. R. 220; 1 H. Bl. 311; Cowp. 243.

(d) *Souch d. Ward v. Willingate*, 1 H. Bl. 311; see *Jenner v. Clegg*, 1 Moo. & R. 213.

(e) See *Doe d. Williams v. Humphreys*, 2 East, 237; *Doe d. Brierly v. Palmer*, 16 East, 53; *Messen-*

*ger v. Armstrong*, 1 T. R. 53; *Doe d. Digby v. Steel*, 3 Camp. 117; *Doe d. Scott v. Miller*, 2 C. & P. 348.

(f) *Whiteacre d. Boulton v. Symonds*, 10 East, 13; *Doe d. Hertford v. Hunt*, 1 M. & W. 690; S. C. 2 Gale, 102.

me on Christmas-day next, the peaceable and quiet possession of all those farm-houses, lands, and premises, with the appurtenances, situate in \_\_\_\_\_ in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_, which you now hold of me, as tenant from year to year, provided your tenancy originally commenced at Christmas: or otherwise that you quit and deliver up to me, the peaceable and quiet possession of the said premises, at the end of the year of your tenancy, which shall expire next after the end of one half-year from the time of your being served with this notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Yours, &c.

(*the landlord*).

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When the notice is given by the landlord's agent, it may be in the following form:—

To Mr. \_\_\_\_\_ (*the tenant*).

I do hereby, as the agent for and on the behalf of your landlord, John Styles, of Longshore Hall, in the county of Sussex, Esq., give you notice to quit and deliver up possession of the farm-house, farm and premises, situate at &c., now in your occupation, on the \_\_\_\_\_ day of \_\_\_\_\_ or at the expiration of the current year of your tenancy.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Yours &c.

(*the agent*).

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A notice to quit by the tenant may be drawn from either of the foregoing forms; or it may be as follows:—

To Mr. \_\_\_\_\_ (*the landlord*).

I hereby give you notice, that on the \_\_\_\_\_ day of \_\_\_\_\_ next, I shall quit and deliver up possession of the farm-house, farm, and premises, which I now hold of you, situate at \_\_\_\_\_ in the parish of \_\_\_\_\_

in the county of \_\_\_\_\_ (agreeably to the covenants  
in the lease, subsisting between us and dated the &c.).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Yours, &c.  
(the tenant).

### SECT. 7.—*Obligation to give up Possession.*

When the tenancy of a farm expires, the tenant must give up the possession of the whole of it to the landlord, crops and everything else, unless there be a custom of the country for the tenant to hold on any part, or to take away any of the crops; and the proof of the custom lies on the tenant (g).

The operation of the custom of the country upon an agricultural tenancy is so continual and all-important, that, at the expense of some inaccuracy in the division of my subject, I have treated of Custom of the Country as a distinct and independent chapter. The rights which the custom of the country gives to the tenant are exceptional to the general common law, and will be discussed separately.

The tenant's duty is to deliver up the premises with all encroachments, erections, buildings, improvements, and landlord's fixtures. If possession be not given up, the tenant's liability continues, and this although he has underlet the whole or a part of the farm to a person from whom he cannot get possession. But if the landlord should recognise such underlessee as his tenant by accepting rent from him, or by any other equivalent act, the liability of the original tenant thence ceases (h). But where the landlord at the request of the tenant accepted in his stead a person whom the tenant knew had previously compounded with his creditors, it was held that the suppression of this fact was a fraud which rendered the original tenant still liable for the rent (i).

*Holding over.*—If the tenant holds over, and the landlord accepts rent from him, a tenancy is created under the terms of the former holding; and an increase of rent will not alter

(g) *Caldecott v. Smythies*, 7 C. & P. 808.

(h) *Harding v. Crethorne*, 1 Esp. 57; *Warring v. King*, 8 M. & W. 571.

(i) *Bruce v. Ruler*, 2 Man. & Ry. 3.

(k) *Right d. Flower v. Darby*, 1 T. R. 162; *Torriano v. Young*, 6 C. & P. 8; *Beale v. Saunders*, 5 Sco. 33.

the position (*k*). Therefore where a tenant held over and paid rent after the determination of a lease, which contained covenants for a particular mode of husbandry, it was held that the landlord might compel him to perform such covenants, in the same manner as if they were still expressly agreed upon between them (*l*). Where the landlord has given notice to quit or pay a certain rent, he may recover the amount of rent specified in his notice, if the tenant holds over (*m*).

*Double Value.*—Where a tenant holds over after notice in writing, such tenant shall pay at the rate of double the yearly value of the lands, tenements, and hereditaments so detained, for so long a time as the same are detained; to be recovered by action of debt (*n*).

The statute does not apply to a retainer of possession, under a fair claim of right, or during a treaty for a further term (*o*).

The notice in writing may be either the ordinary notice to quit, or a demand made after the determination of the tenancy (*p*). And the double value may be recovered after possession of the farm has been obtained by ejectment (*q*).

The notice to quit or to pay double value, may be in the following form:—

To Mr.

(*the tenant*).

I hereby give you notice to quit and deliver up, on or before the                      day of                      next ensuing the date hereof, the possession of the messuages, lands, tenements, and hereditaments, with the appurtenances which you now hold of me, situate at                      in the parish of                      in the county of                      ; and in failure thereof, I shall require and insist upon your paying

(*k*) *Right d. Flower v. Darby*, 1 T. R. 162; *Torriano v. Young*, 6 C. & P. 8; *Beale v. Saunders*, 5 Sco. 33.

(*l*) *Roe d. Jordan v. Ward*, 1 H. Bl. 97; and see *Jones v. Shears*, 4 Ad. & E. 832.

(*m*) *Lofft*, 153.

(*n*) Stat. 4 Geo. II. c. 28, s. 1.

(*o*) *Wright v. Smith*, 5 Esp. 203; *Anon.* 5 Esp. 215.

(*p*) *Messenger v. Armstrong*, 1 T. R. 53; *Cobb v. Stokes*, 8 East, 358.

(*q*) *Soulsby v. Neving*, 9 East, 310.

thenceforth for the same double the yearly value thereof, for so long time as you shall keep possession of the said premises after the expiration of the said notice, according to the form of the statute in such case made and provided.

Dated this                      day of                      185 .  
(the landlord).

*Double Rent.*—So, by the statute 11 Geo. II. c. 19, s. 18, where a tenant gives notice of an intention to quit, and does not accordingly deliver up possession, he shall pay double the rent which he would otherwise have paid.

This must be a valid notice to quit, but need not necessarily be in writing. The double rent may be levied, sued for, and recovered as the single rent might have been.

The payment of double rent or double value creates no tenancy, and the tenant may leave without notice (r).

A demand for double value against a tenant holding over, under stat. 4 Geo. II. c. 28, may be sued for in the county court, under the 58th section of the 9 & 10 Vict. c. 95 (s).

Where a tenant, after notice to quit has expired, holds over and commits dilapidations, the landlord may treat the tenant as a trespasser, or he may waive the trespass and bring an action on the case in the nature of waste (t).

#### SECT. 8.—*Recovery of Possession.*

*Recovery of Possession at Expiration of Tenancy.*—In tenancies under 50l. the County Courts Act, 9 & 10 Vict. c. 95, s. 122, gives a remedy for the immediate recovery of possession after the determination of the tenancy; the section is as follows:—"And be it enacted, that when, and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises, or the rent payable in respect of such tenancy did not exceed the sum of 50l. by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit; and such

(r) *Booth v. Marfarlane*, 1 B. & Q. B.  
Ad. 904.

(s) *Wickham v. Lee*, 18 L. J. 21, 360.  
(t) *Burchell v. Hornsby*, 1 Camp.

tenant, or if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the County Court to be holden under this act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the Court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of the service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the Court to any bailiff of the Court, requiring and authorizing him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly: provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning, and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the County Court from any action which may be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises."

Upon this section it has been decided that it is sufficient to bring a case within the Act, that the yearly rent is under the

value of 50*l.*, and that no fine has been paid even if the actual value of the premises be beyond that sum (*u*).

It was also held that the judge of the county court has jurisdiction to inquire whether the tenancy was determined by a legal notice to quit, and that his decision on that fact is conclusive (*x*).

In cases of occupiers without a rent, or at a rent not exceeding the rate of 20*l.* a year, as tenants at will or from year to year, or for any term not exceeding seven years, the stat. 1 & 2 Vict. c. 74, s. 1, enacts that, when the term or interest shall have ended or shall have been duly determined by a legal notice to quit or otherwise, and such tenant or (if such tenant do not actually occupy the premises, or only occupy a part thereof,) any person by whom the same or any part thereof shall be then actually occupied shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord of the said premises, or his agent, to cause the person so neglecting or refusing to quit and deliver up possession to be served (in the manner hereinafter mentioned) with a written notice in the form set forth in the schedule to this Act, signed by the said landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show to the satisfaction of the justices hereinafter mentioned reasonable cause why possession should not be given under the provisions of this Act, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to such justices proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof; and where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession, and upon proof of service of the notice and of the neglect or refusal of the tenant or occupier as the case may be, it shall be lawful for the justices acting for the district,

(*u*) *Fearon v. Norvall*, 5 D. & L. 445.

(*x*) *Ibid.* 439.



division, or place, within which the said premises or any part thereof shall be situate, in petty sessions assembled, or any two of them, to issue a warrant under their hands and seals to the constables and peace officers of the district, division, or place, within which the said premises or any part thereof shall be situate, commanding them within a period to be therein named, not less than twenty-one or more than thirty clear days from the date of such warrant, to enter (by force if needful) into the premises, and give possession of the same to such landlord or agent: provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant shall be granted from any action which shall be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, when such person had not at the time of granting the same lawful right to the possession of the same premises: provided also, that nothing herein contained shall affect any rights to which any person may be entitled as outgoing tenant, by the custom of the country or otherwise" (y).

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The form of notice as prescribed by the schedule of the Act is as follows:—

To deliver up possession under the statute 1 & 2 Vict. c. 74.

To Mr.

(*the tenant*).

I, John Styles, the owner (or John Nokes, agent to John Styles, of &c., the owner) of the premises hereinafter mentioned, do hereby give you notice that unless peaceable possession of the farm house, farm lands, and tenements, situate at and in the parish, &c., and county, &c., which was held of me, (or "of the said John Styles,") under a tenancy from year to year, (or as the case may be,) which expired (or "was determined") by notice to quit from me on the

(y) As to the provision of the stat. 4 Geo. II. c. 28, s. 2, applicable to cases where a right of re-entry

has been reserved by the lease, see *post*, Chap. VI., sect. 9.

day of \_\_\_\_\_, and which said farm house, farm lands, and tenements, are now held over and detained from the said John Styles, be given to me (or "to the said John Styles") on or before the expiration of seven clear days from the service of this notice, I  
 . \_\_\_\_\_, shall on \_\_\_\_\_ next, the  
 day of \_\_\_\_\_, at \_\_\_\_\_ of the clock of the  
 same day at \_\_\_\_\_, apply to Her Majesty's justices of the peace acting for the district of  
 (being the district, division, or place, in which the said premises or any part thereof is situate,) in petty sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said farm house, farm lands, and tenements, and to eject any person therefrom.

(Signed)

(owner, or agent).

Dated this

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*Where Premises deserted.*—The law supplies remedies for the illegal desertion as well as for the illegal retainer of the premises.

By statute 11 Geo. II. c. 19, s. 16, it is enacted "that if any tenant holding any lands, tenements, or hereditaments at a rack rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent" [by 57 Geo. III. c. 52, one half-year's rent] "shall desert the demised premises, and leave the same uncultivated, or unoccupied, so as no sufficient distress can be had, to countervail the arrears of rent; it shall and may be lawful to and for two or more justices of the peace of the county" [within the Metropolitan Police district the proceedings are different, see 3 & 4 Vict. c. 84, s. 13,] "riding, division, or place (having no interest in the demised premises), at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed on the most notorious part, notice in writing what day (at the distance of fourteen days at the least) they will return to take a second

view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrears, or there shall not be sufficient distress upon the premises; then the said justices may put the landlord or landlords, lessor or lessors into the possession of the said demised premises; and the lease thereof to such tenants, as to any demise therein contained only, shall from thenceforth become void."

By 57 Geo. III. c. 52, the remedy is extended to the case of tenants "who shall hold such lands and tenements, or hereditaments under any demise or agreement either written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent."

An appeal is given to the justices of the next assize, who may order restitution and award costs. See 11 Geo. II. c. 19, s. 17.

The cases decided upon this statute do not appear to require any extended notice here, as they chiefly relate to the powers and liabilities of justices of the peace acting under them (z).

#### SECT. 9.—*Emblements.*

Those who have an uncertain estate or interest in the land, which estate is determined either by the act of God or of the law between the period of sowing and the severance of the crop, are entitled to emblements or the profits of the sown land (a). These emblements are not restricted to corn, but extend to every crop of a species which ordinarily repays the labour by which it is produced within a year from the time when that labour is bestowed (b). Attached to the right to emblements is the right to enter, cut, and carry them away after the estate is determined (c).

Tenants at will are entitled to emblements as we have already seen, when the estate is determined by the landlord's act or death (d).

(z) See *Boston v. Carew*, 5 D. & R. 558; 3 B. & C. 649; *Ex parte Piton*, 1 B. & Al. 369; *Ashcroft v. Bowne*, 3 B. & A. 684; *Wilson v. Sewell*; *Reg. v. Trail*, 12 Ad. & E. 781; *Ex parte Fielder*, 6 Dowl. 535.

(a) *Shep. Touch.* 244, n.; 2 Bla. Com. 123.

(b) *Graves v. Wild*, 5 B. & Ad. 105.

(c) *Shep. Touch. ubi supra.*

(d) *Ante*, p. 3.

## CHAPTER IV.

## OF THE CUSTOM OF THE COUNTRY.

§ 1. *General Nature and Validity of.*

§ 2. *Usual Scope of.*

Husbandlike Culture.—Manure.—Old Turf.—Commencement of Tenancy.—Pre-entry to Plough.—Outgoing and Incoming Obligations.—Periods of Payment of Rent.—Repairs.—Restrictions and Obligations in Management of Farm.

§ 3. *Epitome of the Agricultural Customs in England and Wales.*

§ 4. *General Observations on the Customs.*

§ 5. *Construction and Operation in Law.*

In Parol Tenancies.—Way-going Crops.—Tithes.—Operation of Customs upon Agreements and Leases.—Remedies for Breach of Custom.—Upon whom Customs are Binding.

SECT. 1.—*General Nature and Validity of.*

THE custom of the country is the common law of agriculture. It governs the relations of landlord and tenant, unless excluded or modified by express stipulation.

These customs of agriculture, however ancient they may be in practice, and for however long a time they may have actually governed the transactions between landlords and tenants in this kingdom, have only become known to and recognised by our Courts of law within a period of comparatively recent date.

We find indeed, even three hundred years since, some traces of a custom which, if properly understood, may possibly be identical with the way-going crop custom so prevalent in many counties.

But at that time the Courts appear to have looked at the question without any consideration of the operation of customs upon the advancement of agriculture, and held that a custom

that a lessee for years should hold his farm for half a year beyond his term was a bad custom (a).

A century and a half later we have the case of *Eastcourt v. Weeks* (b), where a custom partaking largely of the nature of an agricultural custom appears on the record and was not disputed. From this time till the middle of the last century the books are silent upon the validity of agricultural customs.

The first case (c) upon the subject of which we have any full report was tried before Yates, J., at the summer assizes for Herefordshire, in 1769. The plaintiff had been lessee under the corporation of Hereford for a term of twenty-one years, which expired on the 4th of December, 1767. In the lease there was no covenant that the tenant should have his off-going crop. In the seed-time, before the expiration of the term, he sowed the fallow with wheat. The succeeding tenant obstructed him in cutting the wheat when it became ripe, and cut and housed it himself for his own use. Upon this the plaintiff brought an action on the case, and declared on a custom in Herefordshire for tenants who quit their farms at Christmas or Candlemas to reap the corn sown the preceding autumn. Yates, J., held that the custom could not legally extend to lessees by deed, though it might prevail by implication in the case of parol agreements.

We shall see hereafter that this doctrine, as to a custom not extending to lessees by deed, has since been overruled. The case is cited here only to show that, in the first reported

(a) H. T. 3 E. VI. (1550). Un customs q̄ ū lessee pur ans tien-droit pur ū demy ann ouster son terme n'est bone, come fuit agree p tous les justices. *White v. Sayer*, Palm. 213. Et Houghton semble ceo al case adjudge cy que un lessee pur ans alleage que custome fuit que lessee avera demy an apres son terme expire de remover ses utin-sils, ceo fuit voyde custome. *Anon.* Moo. 8, pl. 27.

(b) *Eastcourt v. Weeks* (reported 1 Lut. 799), decided in 1699, was ejectionment for a messuage and three acres of land. The jury found a special verdict that the messuages were customary tenements, and par-

cels of the manor of Newton, in the county of Wilts. That William Weeks was seised of these customary tenements for his life, and married Elizabeth Kitt, and died. That there was a custom of the manor that the wife of a copyholder who dies seised shall hold *durante viduitate*, and that the executors of such tenant, if he dies between Christmas-day and Lady-day, shall hold till next Michaelmas. The validity of the custom was not disputed.

(c) *Trumper v. Cardwardine*, cited in *Wigglesworth v. Dallison*, Doug. 202.

modern instance in which the custom to take an outgoing crop was brought before the Courts, it was admitted to be capable of being sustained.

The next reported case is that of *Wigglesworth v. Dalison* (d), which was tried at Lincoln in 1778, before Mr. Baron Eyre, and afterwards came before the Court of Queen's Bench on motion in arrest of judgment. It is a leading case upon the subject of Agricultural Customs, and I shall have occasion to recur to it when treating of the effect of the custom of the country upon written agreements.

It was an action of trespass for moving, carrying away, and converting to defendant's own use, the corn of the plaintiff in a field called Hibaldstow Leys, in Hibaldstow in Lincolnshire. The defendant pleaded that the close was his soil and freehold. The plaintiff replied, a custom that within the parish of Hibaldstow there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable custom there used and approved of; that is to say, that every tenant and farmer of any lands within the same parish, for any term of years which hath expired on the 1st day of May in any year, hath been used and accustomed, and of right ought to have, take, and enjoy to his own use, and to reap, cut, and carry away when ripe and fit to be reaped and taken away, his way-going crop,—that is to say, all the corn growing upon the said lands which hath before the expiration of such term been sown by such tenant upon any part of such lands—not exceeding a reasonable quantity thereof in proportion to the residue of such lands, according to the course and usage of husbandry—in the same parish, and which hath been left standing and growing upon such lands at the expiration of such term of years. The rejoinder put the custom in issue. The jury found the custom in the words of the replication.

The defendant objected to the custom as unreasonable, uncertain, and repugnant to the deed under which the plaintiff held. The last objection falls within another part of our subject; but upon the first two Lord Mansfield, in delivering the judgment of the Court, said, “We are all of opinion that the

custom is good. It is just, for he who sows ought to reap, and it is for the benefit and encouragement of agriculture. It is indeed against the general rule of law concerning emblements, which are not allowed to tenants who know when their term is to cease, because it is held to be their fault or folly to have sown when they knew their interest would expire before they could reap. But the custom of a particular place may rectify what otherwise would be imprudence or folly."

The case was afterwards carried to the Exchequer Chamber, where, after argument, Lord Loughborough delivered the unanimous opinion of the Court, that the custom was good; and the judgment was affirmed.

The next case in order of time is that of *Powley v. Walker (e)*, decided in 1793. The plaintiff in his declaration alleged in the first count that the defendant became and was tenant to the plaintiff of a certain farm, &c., in consideration whereof he undertook and promised not to carry away from the farm any of the straw, dung, compost, &c. The second stated that for the same consideration the defendant undertook and promised to cultivate the land in a good and husbandlike manner according to the custom of the country; and the third, to manage and cultivate the land according to the usage and course of good husbandry. After verdict for the plaintiff, it was moved to arrest the judgment on the ground that there was no consideration for the promises, inasmuch as it was not alleged that the defendant had become tenant to the plaintiff on the terms that he would cultivate the land in a good and husbandlike manner, but merely that he became and was tenant to the plaintiff. But the Court said the bare relation of landlord and tenant was a sufficient consideration for the promises in the declaration, and therefore they refused the rule.

These cases fully established the validity of agricultural customs, both to vary the ordinary common-law obligation to surrender up the soil and all that is attached to it at the termination of the tenancy, and to impose upon the tenant obli-

(e) 5 T. R. 373.

gations as to culture, which would not be any part of the general law applicable to waste.

## SECT. 2.—*Usual Scope of Customs.*

We have already seen that the mere relation of landlord and tenant is sufficient consideration to raise an implied promise on the part of the tenant to manage a farm in a husbandlike manner (*f*). This obligation arises out of the bare relation of landlord and tenant (*g*).

The question remains, What is a husbandlike manner? The answer must be supplied by the custom of the district in which the farm is situated. The tenant in the absence of special stipulations must take, till, and quit, according to the custom of the country.

The custom here spoken of (so far at least as it governs the course of good husbandry) is not that immemorial, unvarying, certain, and reasonable general usage, which is known to the law as a custom (*h*). The custom of the country *with reference to good husbandry*, only means the prevalent course of good husbandry and the prevalent usage between landlords and tenants in the neighbourhood (*i*). It is sufficient if there be a general usage acted upon in farms of a similar description around. Very often the custom of good husbandry is exceedingly vague and uncertain. It is not necessary to prove any precise definite custom or usage as to the exact proportion of a farm which may be in tillage; for where it was shown that many farmers in the neighbourhood had only one-fourth of their farm in tillage at once, but that others had one-third, and none, except the defendant, had a larger proportion than a third, this was held sufficient to show that the defendant by having a half of his farm in tillage at one time had treated his farm contrary to good husbandry and the custom of the country (*h*).

Where a custom of the country is proved to exist (as we

(*f*) *Powley v. Walker*, 5 T. R. 373.

(*g*) *Ante*, p. 45.

(*h*) 3 Moo. 536; 1 B. & B. 224.

(*i*) *Per* Lord Ellenborough, *Leigh v. Hewitt*, 4 East, 154.

(*k*) *Ibid*.



shall show more at large hereafter) it is applicable to all tenancies in whatever way created, whether verbal or in writing, unless expressly or impliedly excluded by the written terms themselves (l).

It has been in some cases considered that there are some universal customs extending all over England, and applicable to all agricultural holdings. In the case of *Brown v. Crump* (m), Gibbs, C. J., stated it to be an implied engagement arising out of land that the tenant shall consume the produce (meaning, of course, the hay and straw) on it. Mr. Justice Buller took a distinction between dung and straw, and said that the former by the common course of husbandry in all places ought to be used upon the premises (n); but the latter was part of the produce of the land, and if not permitted to be sold none could be brought to market. It has been conceived also by a learned writer (o) that it is a general custom that pasture land, even though laid down by a tenant, cannot be ploughed up. This, however, it is submitted, depends not upon any custom of the country but upon the general law of waste (p). Experience shows that there is no rule of husbandry, however universally good, which can be considered as universally obligatory. In Cornwall, Hertfordshire, and some other counties the custom is express that hay and wheat straw may be sold off, although all other straw must be used on the premises. In Kent, Surrey, and other districts, hay or straw may be exchanged for dung. In Lancashire all hay and all straw may by the custom be sold off, and throughout the midland counties the restriction is the exception and not the rule. In Staffordshire the old pastures had twenty years ago been so largely ploughed up under the custom that special provisions are now general to prevent it (q); and in many other counties the custom is quite silent in this respect.

In Westmoreland, under some circumstances, a tenant, if

(l) *Wilkins v. Wood*, 17 L. J. 319, Q. B.; and see 2 Gale, 71; 1 M. & W. 466; Tyrw. & G. 646; 1 Doug. 201; Holt, N. P. 197; but see also *Leithwood v. Viner*, 1 Mer. 7.

(m) 1 Marsh. 567; and see 5 T.

R. 373.

(n) Peak. Ad. Ca. 197.

(o) Woodf. L. and T.

(p) Com. Dig. tit. Waste, and see ante, p. 23.

(q) See Kennedy and Grainger's Practice of Tenancy, 1, 327.

he may not sell his dung may refuse to expend his straw in making any, and may carry away all his straw upon the principle that "where a tenant does not find muck he need not leave it," and in Caermarthenshire a tenant might, when Messrs. Kennedy and Grainger wrote, break up pastures and sell hay, straw, or dung, without offending against any custom of the country.

It is submitted, therefore, that there is no general rule of law upon this subject, except that against waste; but that the custom of good husbandry is the prevalent usage of the neighbourhood.

The agricultural customs throughout England are very various and sometimes very vague; often very uncertain as to the district which they govern, and for the most part more or less impolitic in their silence, their obligations, their restraints, and their encouragement of bad farming. They are supposed to point out the time of entry of an incoming tenant, and of departure of an outgoer—the more or less complicated arrangements by which the outgoer is wholly or partially compensated for the rent, labour, seed, and manure, which had not brought forth their fruit when his tenancy ceased; and for permanent improvements not enjoyed for a sufficient length of time to repay him their cost—the periods of payment of rent—the contribution of landlord and tenant towards repairs of buildings—and restrictions and obligations imposed on the tenant in the management of the farm.

1. *The Commencement of the Tenancy.*—The customs as to commencement are less subject to change than any others, because the landlord can alter these only by keeping the farm for some time on hand. There are doubtless some New Year's-day, Candlemas, May-day, Midsummer, Martinmas, and Christmas tenancies; but the great bulk of English tenancies is divided between Lady-day and Michaelmas (r). In the Lady-day tenancy the tenant enters upon his land when the wheat stubbles should have been ploughed—when the land should have been prepared for the spring crops, but the seed

(r) Besides the frequent tenancies at Old Lady-day (6th April), Old Michaelmas-day (11th October), Candlemas-day (2nd February), there are also occasional in-

stances of tenancies commencing at May-day, Old May-day (13th May), at Martinmas-day (11th November), or Old Martinmas (23rd November), and even Lammas-day (1st August).

has for the most part not been got in—and when the wheat crop of the ensuing harvest has been sowed. This tenancy necessitates the most complicated arrangements to dovetail the interests of the incomer and outgoer. For if the custom does not indemnify the outgoer for his expenditure upon the wheat stubbles of last year, the wheat lands of the current year, and the land allotted to spring crops, the work will be left undone and the course of husbandry will be broken. If, on the other hand, it enables the outgoer to gain an advantage by doing more than is necessary, the course of husbandry is in another way broken, and the incomer is drained of his capital to pay for unnecessary operations.

The best and the most common expedient to meet these difficulties is to give a right of pre-entry to the incoming tenant to do the necessary work of preparation at the proper times.

It is essential to good agriculture that the whole of that produce of the farm which is convertible into manure should return again in that shape to the land. The outgoer therefore, in all the best-customed districts, has a compensation for the wheat crop which he has sown, accommodation allowed him for threshing out the corn which he has in his stack-yard, (or which he will have next harvest if the compensation takes the form of a proportion of the coming wheat crops,) and stabling, and a field, or as it is sometimes called a boosy pasture, for the purpose of converting the produce into manure.

In the Michaelmas tenancies the crops have been harvested but are not yet threshed out, the summer fallows have been worked. Here also the incomer must either have a pre-entry to sow his seeds and work his fallows or he must pay the outgoer for doing so, or the outgoer must be allowed to take the whole or some portion of the crop he has sown. The outgoer also must retain accommodation to consume his hay and straw, or he must be allowed to take it off the land, or the incomer must be compelled to buy it.

2. *The Arrangements between the Outgoer and Incomer.*—The necessity for these customs has been already shown. The two principles which should mould them appear to be that all the manure arising upon the farm shall be returned to the farm, and that the regular course of husbandry shall not be

interrupted. All the customs as to outgoers and incomers aim at these two objects—the best are those which secure them at the least cost of capital to the incomer. We need not speak of equity to the outgoer, for if the custom does not observe this the object cannot be attained. An outgoing tenant is not likely to perform work for which he is not to be compensated.

Permanent improvements, such as draining, fencing, and building, are necessarily to be compensated only by money, and the customs as to these matters, where any customs exist, point out the principles upon which this compensation shall be estimated.

Agricultural customs divide themselves into light takings and heavy takings. In the first, the tenant finds his farm in good working order and he is bound to leave it so. In the second, he finds nothing but the bare land, or pays for everything which has been done to the land to put it in working order, and when he leaves he either leaves it exhausted or is paid for all his unexhausted expenditure upon it. The first system requires least capital in the farmer, the second gives him most security for large outlay in high scientific farming.

3. *The Periods for Payment of Rent.*—The customs as to this, where they vary from the quarterly or half-yearly system, have the object of making the rent fall due when the tenant may be presumed to be most in funds from the sale of his produce. In many parts of Scotland the tenant pays no rent for the first eighteen months, and then only half a year's, leaving a twelvemonth's always in arrear to be paid at last a year after the end of his tenancy. In Hertfordshire the custom allows a half-year's rent to be always in arrear, provided the tenant has upon the farm sufficient security for the arrear; but usually our English rent-days are either annual or six-monthly, and the arrangements of pre-entry more generally operate to make an incoming tenant pay rent for land from which he has at the time of payment received no return.

4. *The Contribution of Landlord and Tenant towards Repairs of Buildings and Permanent Improvements.*—The customs in this respect are usually modifications of the general rule of law, which does not impose an obligation of doing substantial

repairs upon yearly tenants (*s*). The custom commonly requires some contribution from the tenant, sufficient to prevent a negligent waste. Most generally the landlord finds the materials and the tenant the labour.

5. *The Restrictions and Obligations imposed on the Tenant in the Management of his Farm.*—This is the most vague and changeable of all our classes of agricultural customs. These customs are incapable of any extended operation. They must vary in every district with climate, situation, and soil, and they must further vary with every advance in the art of agriculture. There are some cases indeed, such as that of the Norfolk shift, in which large tracts of similar soil will admit of one general system, and in which we can hardly anticipate any great improvement upon the present rotation, until science shall have discovered some method of producing continual successive corn crops. But, in ordinary cases, such customs as these must, if applied to any extent of land, be uselessly indefinite in order to be innocuous. The safest plan in this respect is to return to our definition, that the custom of good husbandry is the prevalent usage of the neighbourhood.

To set forth all agricultural customs in detail, even if the task were possible, would require many volumes; but a husbandry custom, unless it be one of the common and well-known fundamental customs relating to outgoers and incomers, or to hay and straw, is as difficult a matter to settle by evidence as is the soundness of a horse. There is no standard to appeal to, no antiquity of practice is required, uniformity of user in the neighbourhood is too rare to be looked for as a guide, exceptions are almost always so numerous as to destroy the rule; very few are the instances in which the two valuers

(*s*) In *Ferguson v. —*, 2 Esp. 590, Lord *Kenyon* said, A tenant from year to year is bound to commit no waste, and to make fair and tenantable repairs, such as putting in windows or doors which have been broken by him, so as to prevent waste and decay of the premises; and in *Anworth v. Johnson*, 5 C. & P. 241, Lord *Tenterden*, C. J., said, "What are the things which an occupier of a house from

year to year is bound to do? I am of opinion that he is only bound to keep the house wind and water tight, and that is all he is bound to do. A tenant who covenants to repair is to sustain and uphold the premises, but this is not the case with a tenant from year to year;" and see *Gibson v. Wells*, 1 N. R. 290; and *Horsefall v. Mather*, Holt, N. P. C. 8.

who meet to settle the account of the outgoer and incomer agree as to the customs which apply to the particular farm. The outgoer can never calculate with any certainty what he has to receive, the incomer can never know beforehand what he will have to pay. Many pains have been taken to prepare a short statement of the most important customs prevalent in England and Wales, but there are frequent exceptions and reservations which could not with any regard to brevity be inserted. A comparison of the following statement with a survey made twenty years ago for the same purpose by Messrs. Kennedy and Grainger (except in some few not very important counties where, from the refusal of local information, I have been compelled to rely upon published matter alone,) will show at once how shifting and uncertain agricultural customs are. The catalogue here submitted to the reader is the result of very diligent inquiry, and of a very careful collection of the testimony of the best agriculturists in their respective counties. It will at any rate furnish abundant materials for a comparison of the customs throughout the kingdom, and may possibly tend to the more general adoption of the best.

I cannot however hope, notwithstanding all the labour I have bestowed upon this part of the subject, that these statements will be received with implicit confidence by professional valuers; but I am sure that it would be a very general convenience if this or any other carefully compiled statement were received as conclusive in all cases where the outgoer could not give positive proof that he entered under some custom different from that here stated. Even occasional incorrectness would be preferable to the present universal uncertainty.

SECT. 3.—*Epitome of the Agricultural Customs in England and Wales (t).*

BEDFORDSHIRE.—“The general bulk of farms are held on a Michaelmas hiring: there are some few held on Lady-day hirings still; but they are generally getting pretty much out: they have occasioned long litigation and a great deal of ill will. The original system in Bedfordshire was a Lady-day hiring, with the outgoing crop; but in most instances the practice is now changed into the regular Michaelmas hiring. The tenant at will receives notice to quit by the 25th March, to leave the next Michaelmas. Then he is obliged, according to the custom of Bedfordshire, (though not invariably,) to give up his fallows and a portion of the farm-house, and a stable for the horses, to the incoming tenant; and the incoming tenant is allowed to come in and sow the seeds himself. The system which prevails most generally in this county is to allow the outgoing tenant to cultivate the fallows in the usual way, carrying the manure out, and sowing the turnips, cutting the hay and stacking it on the farm. The outgoer is paid by valuation for hay and turnips—nothing more, except for acts of husbandry on his fallows. However expensive the manure may be made, whether it be mere straw and water, or enriched by oil cake, the tenant receives nothing but the mere cartage (u).”

Messrs. Kennedy and Grainger (x) state the customs of this county as follows:—“A tenant is generally restricted from

(t) The space which this epitome occupies is certainly very great and would appear to require apology: I offer it in the words of Messrs. Kennedy and Grainger, who in their now almost obsolete work remark, “The learned treatises upon the law of landlord and tenant are sometimes found wanting in what is most essential, namely, the customs of the respective counties, which are frequently, like the customs of London amongst merchants, recognised in courts of justice: and thus, so far as they relate to the districts where they respectively prevail, have all the force and effect of the law of the land.” It would have

relieved me from a great and very irksome labour if I could have disposed of this part of the subject by a reference to Messrs. Kennedy and Grainger’s work; but two-and-twenty years work changes even in customs, and I found, upon consultation with practical agriculturists, that this survey is no longer considered to be of authority. In the few counties where I have been compelled to adopt it, I have stated my authority.

(u) Mr. W. Bennett’s evidence, Q. 1919, Report on Agricultural Customs, House of Commons, 1848.

(x) P. 134.

breaking up pasture land ; he is likewise bound to feed all hay and straw upon the premises : this latter restraint is now much more general than it used to be, owing to the great inconvenience occasioned within a few years past, in various places, from the want of it : there are some farms, however, which are still free from the restriction ; but, as the leases terminate, it is generally imposed upon the new tenant. The custom alone therefore, would appear not to enforce this obligation.

“ With regard to the mode of farming—the quantity or rotation of crops—there is no general rule, nor as to the proportion of wheat allowed to be sown.

“ A tenant quitting at Michaelmas is at liberty to plough and sow the wheat ; and one leaving at Lady-day, to sow the spring corn : provided, in the former case, the grain can be sown by Michaelmas-day, and in the latter by Lady-day ; the outgoing-tenant, however, has the option in both cases, of either sowing it himself or of allowing his successor to come upon the land to do it instead.

“ When the outgoer sows the crops they are generally valued to the incomer, so as to include all the labour bestowed upon them, provided he chooses to take them ; but if he refuses them, the former is obliged to hold the land he has sown till harvest-time, and spend the straw of the crop upon the premises, having barn and yard room allowed him for that purpose. Where, however, a tenant is free from this restriction, the corn and straw are generally carried off elsewhere ; but, under either custom, the incomer has a right to make use of all the dung he finds upon the premises, free of expense—no payment for it being required. The incomer pays for the grass seeds according to their value, and that of the labour, and likewise for fallow-ploughing, or any spring-ploughing which his predecessor quitting at Lady-day had not time to sow ; but with respect to any fallow, either for wheat or turnips, when the outgoer takes the crop, there is no demand made upon the incoming tenant.”

BERKSHIRE. — *Michaelmas Tenancies*, with pre-entry to plough at Lady-day.

Rentals half-yearly.

Tenant does repairs, landlord finding materials.



Incoming tenant is bound only to take the remaining hay at a feeding-out price, and the grass seeds upon the ground at the value of the seed and labour.

The outgoer pays all the rent to Michaelmas, and is paid only for acts of husbandry.

There is no customary restriction as to cropping, and hay and wheat straw may be sold off. The manure belongs to the landlord.

Where farms are leased, as is not unfrequent in this county, stipulations dehors the custom are of course introduced, but these are seldom of a nature to prevent the land being run out by the tenant during his lease (y).

The usual rotations are for the turnip land, turnips, barley, (or oats,) seeds, wheat, oats.

Upon the heavy soils, fallow, wheat, beans, wheat, oats; but the four-course husbandry is the prevailing rule of the county. On the chalk downs, the land is cultivated on the four-course system, but with some variation from the Norfolk shift, barley being taken after clover, hay and wheat following turnip and rape, which are eaten off early. About a tenth part of the farm is usually kept under sainfoin, in which it remains for four years, being cut each year for hay. In the district eastward from Wantage, corn and leguminous crops follow each other in succession, very little stock being kept, and the land being fertile enough for alternate corn and bean crops. Water meadows are becoming frequent in this county (z).

*BUCKS.—(Contributed by Mr. King, of Winslow.)*

Tenancies most commonly commence at Lady-day, but sometimes at Michaelmas.

Half-yearly rentals in money; tenants have seldom more than three months' rent in hand: in many cases the rents

(y) This is less the case now than it was in 1828, when Messrs. Kennedy and Grainger wrote. See the ordinary form of a Berkshire lease, post, *Precedents of Leases*, No. 4.

(z) Having received no assistance from the agriculturists of this county, to whom I have applied for

information, I have been compelled to rely for this statement upon Messrs. Kennedy and Grainger's work; upon the agricultural reports published in the *Times*; and upon Mr. Houghton's evidence in the House of Commons. Report upon *Agricultural Customs*, p. 231.

are demanded six weeks after they are due. Tenants keep buildings in repair upon being furnished with materials by the landlord.

Outgoing tenant has option either to allow incomer to enter previously, or to plough and sow himself. If the latter, the incomer must pay for seeds, carting, and ploughing; the amount of which is usually settled by a valuation made by two arbitrators or their umpire.

All the hay, straw, and fodder is consumed on the premises, and all dung is left.

There is no tenant-right by the custom of this county.

Rotations upon light soils—turnips, barley, seeds, wheat. On heavy lands—wheat, beans, fallow.

CAMBRIDGE.—(*Contributed by Mr. Bedwell, of Ely.*)

*Tenancies.*—Tenancies are held yearly and on lease, at rents payable half-yearly, generally speaking in money; the Michaelmas half-year being usually paid at Christmas, and the Lady-day at Midsummer.

*Rentals.*—Some farms held under the Colleges at Cambridge are taken on lease at a *corn rent*, viz., the price of so many bushels of wheat and barley according to imperial averages.

This custom is becoming more general.

*Repairs.*—The outside repairs of the house and outbuildings are usually kept up by the landlord, and the inside of the house also; the gates and fences by the tenant. It is, however, a custom very prevalent for the landlord to put the premises and fences into good repair and make the tenant an annual allowance, and find rough timber for him to keep and leave all the premises in good tenantable repair.

*Outgoing and Incoming Obligations.*—At Michaelmas the incoming tenant takes by valuation the hay, the fallow or green crop; and if the outgoing tenant threshes and markets his own corn, the incoming tenant pays for the straw, chaff, and colder, at per quarter on the quantity of corn threshed. If the incoming tenant threshes and takes to market the corn, not exceeding the distance of ten miles, the straw, chaff, and colder is *not paid for*.

The manure is by the custom vested in the land and not paid

for, except the labour in carting and spreading the same. But it is now becoming much more general to pay for the manure by valuation, as it is an encouragement for the outgoing tenant to make the same of a better quality than he would do if he was only compelled to convert the straw into manure without allowance. This latter arrangement will, it is thought, in a few years become more general.

The custom, however, has always been, *as you enter the farm so you leave*, unless under an inclosure, when all existing terms are done away with, or by fresh arrangement.

The tenancies of the highland portion of the county *were formerly nearly all Lady-day* occupations, and the land cropped on the three-course system—two crops and a dead fallow. The latter description of arable land farmed on the five-course system,

Viz., 1st. Dead fallow;

2nd. Wheat;

3rd. Barley;

4th. Beans;

5th. Cross crop of wheat or oats.

But within the last twenty years a great many of the parishes have been inclosed, and such custom quite exploded *in the Isle of Ely and northern and eastern portions* of the county; and many of the farms are now converted into Michaelmas occupations, the land farmed on the four-course system of husbandry. Thus,

*Rotation of Crops.*—Fourth part of the arable land to be fallow, and sown with turnips, mangold wurzel, or other green crop, to be fed off the land by sheep or beasts on the premises belonging thereto, according to the description of the land.

Fourth, barley or oats;

Fourth, clover seeds, or beans or pease;

Fourth, wheat.

On the stronger descriptions of highland the bean crop is more generally adopted than seeds. Seeds are not sown oftener than once in eight years on the same land; and, in case of a failure of seeds, a pulse crop is allowed.

This may now be considered the usual rotation of cropping on the highland in the Isle of Ely and northern and eastern portions of the county. Special restrictions against breaking

up grass land, and not mowing same two years in succession, and for consuming hay, straw, chaff and colder roots, and turnips on the premises.

*With regard to the Fen Portion of the County of Cambridge and Isle of Ely.*—In consequence of the improved state of the drainage (now in most cases under steam power), many of these lands are very productive, so that within the last twenty years large portions of the fens have been brought into a high state of cultivation; and, after the same are clayed, which is a subsoil found at a depth varying from three to nine feet from the surface, they will grow very good crops of wheat, beans, and oats, so that no general course of cropping can be laid down. The only restriction prevalent at the present time, with regard to the course of cropping, is that *two wheat crops* may not be taken on the same pieces of land in successive years or seasons, and so that in the last year of a lease the land may be left in the following state and condition; that is to say,

Fourth part, seeds on wheat stubble;

Fourth part, oats after coleseed or other green crop;

Fourth part, in fallow for coleseed or other green crop;

Fourth part, in grass;

subject to the like times and tenure as to hay, straw, and manure.

There is a customary penalty of 10*l.* an acre for breaking up land without laying down a similar quantity.

No custom as to cropping; but the usual rotation is potatoes, oats, barley, wheat, seeds. Another method is, potatoes, wheat, oats, seeds.

*CHESHIRE.—Tenancies. Lady-day Holdings.*—The tenant has possession of the meadow on the 25th of December, the tillage land on the 2nd of February, the pasture and other land on the 25th of March, and the house, buildings, and boosey pasture on the 1st, sometimes the 12th of May.

*Rentals, half-yearly.*—On some estates a right is reserved to a year's rent in advance, if demanded.

*Outgoers and Incomers.*—The outgoer takes his way-going wheat crop of half for a brush crop, and two-thirds for a fallow, consuming the straw on the premises, receives for seeds and

sowing, but has no further tenant right. The manure belongs to the farm.

*Obligations and Restrictions.*—Hay and straw may not be removed except in the neighbourhood of the large towns, where the custom often allows these articles to be sold off upon leading an equivalent quantity of horse-manure. The old meadow and pasture may not be ploughed. In many districts a custom prevails that the tenant shall supply the landlord with a cheese of the largest size made on the farm.

[I have taken this account from the evidence of Mr. White, given before the Agricultural Customs Committee, and from the forms of agreement in the county, and from Kennedy and Grainger's Practice of Tenancies.]

CORNWALL.—*Tenancies.*—Lady-day and Michaelmas in about equal proportions, but there are some also at Midsummer and Christmas. Leases and agreements for seven, fourteen, and even occasionally for twenty-one years are common. It is not the habit to let by verbal agreement from year to year.

*Rentals* are generally half-yearly, and it is usual, but not a binding custom, to allow six months' credit from the day the rent becomes due.

*Repairs.*—Landlord repairs walls and slated roofs, and sometimes doors and floors. The tenant does all other repairs, being allowed rough timber generally.

*Incomers and Outgoers.*—In Michaelmas tenancies the incomer enters at Midsummer to prepare a wheat tillage, allowing the outgoer compensation for the loss of the land for the time taken. The outgoer retains the use of the barn, mow-hay, &c., until Christmas or Candlemas. In Lady-day tenancies the incomer enters at Christmas to plough and prepare the land for spring crops, to cart manure, &c. This right of pre-entry is however usually reserved by special agreement, and the best opinion appears to be that there is no such right by the mere force of custom. The incomer pays for the wheat crop and misspent purchased manure a price fixed by arbitration. The outgoer has the use of the barn and outhouses until the second week in May.

*Restrictions and Obligations as to Culture.*—All the hay,

straw, and dung are left on the premises for the use of the incomer. The meadow land, when not irrigated, must be manured with dung or compost after every alternate cutting for hay. *Arable*.—In some districts, where the soil is favourable to the growth of turnips, there is a custom to follow every white or grain crop with a green crop or seeds; but, in inferior districts, it is not considered contrary to the custom of the country to take two white straw crops in succession.

*Rotations of Crops* vary very much. In the best districts, and with the best farmers, wheat, green crop, barley, seeds, the ground being again ploughed for wheat; the first or second clover. In the ordinary or inferior districts, wheat, barley or oats, seeds, or sometimes an intervening green crop and another crop of oats or barley, and then laid down for two or three years. On land of a still coarser description, wheat, oats, seeds, and the land laid down for five or even more years, and in this also a green crop, and another grain crop may be sometimes added.

[I am indebted for my knowledge of the customs of Cornwall to Mr. Badcock, of St. Stephen's, Launceston.]

CUMBERLAND.—Candlemas (2nd February) is now the all but invariable time for entry on arable farms. Formerly, Lady-day was the term generally adopted. This term is now, however, mainly restricted to farms peculiarly circumstanced, or to which sheep stock depastured on high grounds are attached. The variations in the soil and climate of this county are so great that widely different courses of husbandry are necessarily pursued; and, as a consequence, the provisions in leases or agreements for a prescribed course of cultivation have reference rather to the peculiarities of each particular farm than to any general system.

Rents are paid half-yearly. Landlords are bound to all repairs, tenants occasionally leading materials at their own cost. In former times, the wheat crop on the clay lands of the county very generally belonged to the landlord; the way-going tenant being bound to leave on the farm the same extent of wheat crop which he received at his entry, and being bound also to give his fallows a certain amount of tillage, and a certain number of loads of manure. This most

injudicious custom has now entirely ceased, the landlord no longer possessing any direct interest in any of the crops. An on-coming tenant is bound to pay, on arbitration, to the way-going tenant the full value of the labour expended on the fallows—the seed, and the lime, and the cartage of the dung—together with a reasonable consideration for the proportion of rent attaching to such fallow land, and also of the accruing rates. In the case of turnip or potato land having been sown with wheat, he is by the custom of the country merely liable to pay for seed and labour. On the dry turnip lands of the county five and six years' courses are general. Oats are all but invariably taken out of lay; turnips eaten on the ground to a greater or less extent, succeeded by wheat or barley; then seeds, part mown and part grazed, followed by one or two years' grass, according to circumstances. On strong lands, bare fallows are substituted to a considerable extent for turnips or other green crop. On dry lands, potatoes are now planted very extensively in certain localities; the facilities for the transit of this crop by railway, holding out strong inducements to those farmers who can command manure to cultivate them on a very extensive scale. On-coming tenants are bound by custom to pay for the labour and the value of all seeds sown upon the farm in due course, whilst they are also liable to pay for the value of the eatage of such seeds from the removal of the corn crop, provided they are left in an undamaged state. The way-going tenant is bound to leave the fences in good repair, and to pay all rates that can be shown to have accrued up to the end of his term.

Leases, or agreements for leases, are the rule; yearly holdings, the rare exception. Tenants are bound by custom to keep their full and usual quantity of stock up to the expiration of their term. This vague provision has been found to work so unsatisfactorily, that many land-owners in recent years have stipulated that all vesture shall be consumed on the premises, excepting only a specified number of cart-loads of hay, straw, and turnips, which the way-going tenant is at liberty to remove.

On farms adjoining the mountains and high pasture lands, where the proportion of arable land to the extent of the farm is small, no general system of cultivation is ordinarily agreed on, excepting only that two successive white crops are gene-

rally prohibited. Farms are still to be found in these districts on which the mountain sheep-stock belongs to the landlord; the tenant being bound to leave the same number of sheep of the same age and quality, free from disease, and in ordinary condition.

[Mr. Blamire, lately the representative of the Eastern Division of this County, and whose authority upon all agricultural matters requires no mention from me, has been so obliging as to revise this statement.]

DERBY.—*South.*—*Lady-day Tenancies.*—Right of pre-entry on 1st of February, to plough stubbles and fallow, and manure mowing land. Half-yearly rentals. Tenant repairs outbuildings.

Incomer takes possession upon payment for seeds, and in some cases for so much of the last year's manure as remains in the yards, or of which the incomer receives the sole benefit. The custom as to dung, however, is that the tenant quits as he took. If the commencement of his tenancy was so long ago that no payment for manure can be shown, the dung is presumed to belong to the farm. On the Duke of Devonshire's estates the manure belongs to the farm, but one quarter the cost of the last year's oil-cake is allowed.

Outgoer takes his away-going crop of fallow wheat, paying a year's rent and taxes for the land; or receives upon leaving two-thirds the presumed value of the crop when reaped. But for wheat sown on any other land than fallow, the value of seed and labour only is paid. The outgoer is not restricted by any custom, as to the breadth of land to be sown with wheat.

There is no general custom that hay and straw must be consumed on the farm; no old grass lands may be broken up.

There is no custom that meadow land and dairy pastures must be manured, nor to regulate mowing.

There appears to be no custom which directs or restricts the course of cropping.

Customs are forming in this county as to allowances to tenants for artificial manures of a permanent nature. Broken bones are estimated at five years' duration, and bone-dust at three, by some valuers of great practice in the county. This, however, cannot be yet stated as a general custom.

*North.*—In the Scarsdale district of the county, and generally throughout the north of Derbyshire, commencing two or



three miles south of Chesterfield, the customs approximate closely to those of the West Riding of Yorkshire.

The tenancies and rentals are the same in the north as in the south.

The following is an accurate statement of the tenant-right established by usage in this northern part of the county.

**SUMMER FALLOW.**—One year's rent and taxes, five dressings if clean (which is left to the judgment of the valuers), seed, wheat, and sowing, the cost of lime and labour, and value of the manure applied.

*Second Year, supposed to be Seeds or Young Clover.*—For half-year's rent and taxes, half (or two) dressings, half-value of manure applied to the fallow, two-thirds of Derbyshire or the white lime, but only half if the brown or Nottinghamshire lime be used, cost of clover, hay-seeds, and labour. Should the seeds be a failure in the spring the cost is usually divided between the offgoing and oncoming tenant, if they have been sown on ground properly fallowed after having been mown or pastured.

*Third Year, supposed to be ploughed and sown with Wheat at Michaelmas.*—For the ploughing and harrowing, drilling, or whatever labour may have been necessarily done, one-third of Derbyshire lime, and for condition, or what the tenant might have claimed supposing he had let it remain for grass land, (less the cost of seeds,) which, if sufficiently seeded, would have become grass land at Lady-day or time of quitting.

*Fourth Year, Oats or Tares.*—The valuation ceases, unless some extra labour has been performed, such as paring stubble, getting off, &c.; such labour is generally allowed for.

**TURNIP FALLOW.**—For one year's rent and taxes, the dressings, cost of turnip seed and hoeing, for lime and manure applied, deducting one-half the value of turnip crop if drawn off, and one-third if eaten on with sheep. If the turnips are produced wholly with bones and eaten on with sheep, the whole value of the bones is allowed; if drawn off, only one-third.

*Second Year, Seeds after Wheat or Barley.*—The same valuation (and principle) is allowed as after wheat from summer fallows, and extends to an allowance of half turnip seed and hoeing, with a deduction for half the value of turnip crop, if drawn off; or one-third, if eaten on.

**POTATOES.**—When potatoes have been grown on a fallow, two dressings, and half the value of the manure is allowed; and sometimes for the seed, furrow, and harrowing after.

**MANURE.**—Applied to grass land, the full value; after once mown, half. If pastured, a progressive decrease for four years.

**LIME.**—Three years valuation, if mown; six years, if pastured.

**BONES.**—Same principle as lime.

**RAPE DUST.**—One third after once mown; one half after pasturing one year.

**GUANO.**—One fourth after one crop is taken.

**UNCONSUMED PRODUCE AT LADY-DAY.**—The marketable value.

**GRASS LAND** is so called when it has been properly seeded after a clean summer, or turnip fallow crop, after having been mown or pastured one year.

**PROPORTION.**—A tenant is allowed to plough half his farm, and is paid for an overplus, or mulcted in a penalty for a deficiency of grass land, on the following principle. An allowance is made for two dressings, half rent and taxes, the cost of clover and hay seeds (and labour) sufficient to lay it down to continue as grass land.

**OVER CROPPING.**—A tenant is mostly paid for all labour properly performed, and if a third white crop is sown in succession, some extra labour has generally been done for which he is paid, and then a deduction is made for a restoration of tillage, from three to five tons of manure per acre, and for two or three dressings according to the state of the land.

On the Duke of Devonshire's estates the outgoing allowances are set forth in special agreements.

**ROTATION OF CROPS.**—In the north, the usual course is summer or turnip fallow, wheat or barley, seeds pastured or mown, wheat, oats, or instead of oats sometimes a green crop, principally tares.

In the south, the rotation from a lay, practised by the best farmers, is (light loamy soils)—oats, turnips, barley, seeds, beans, wheat. On the stronger soils—oats, fallow, wheat, seeds, beans, wheat.

[I am indebted for my information, as to the southern part of this county, to Mr. John Bromley, of Derby; and, as to the northern part, to Mr. William Lister, of Pentrich.]

DEVONSHIRE.—*Tenancies*.—Lady-day and Michaelmas in about equal proportions, but there are some also at Midsummer and Christmas. Leases for seven and fourteen years are common, and some even extend to twenty years. It is not the habit to let by verbal agreement from year to year, although lettings of that description occasionally occur.

*Rentals* are generally half-yearly, and it is usual to allow six months' credit from the day the rent becomes due; but this is not a binding custom.

*Repairs*.—Landlord repairs walls and slated roofs. The tenant does all other repairs, being sometimes allowed rough timber.

*Incomers and Outgoers*.—In Michaelmas tenancies, the incomer enters usually in July, to prepare a wheat tillage, allowing the outgoer compensation for the loss of his land for the time taken. The outgoer retains the use of the barn, mows hay, &c., until Christmas or Candlemas. In Lady-day tenancies, the incomer enters at Christmas to plough and prepare the land for spring crops, to cart manure, &c. He pays, for the wheat crop and unspent purchased manure, a price fixed by arbitration. The outgoer has the use of the barn and out-houses until the second week in May. This, however, does not exist as a binding custom throughout the county. Mr. George Turner, in his evidence before Mr. Pusey's Committee, states it to be his opinion that in the absence of a special agreement or a lease (4970), the outgoing tenant has no right to anything after he quits his farm, and (4973) there is no custom to give the incomer any right of pre-entry at all. Subsequently, however, (5039,) Mr. Turner recognizes it as a Devonshire custom, that the incomer shall step in to sow.

*Restrictions and Obligations as to Culture*.—All the hay, straw, and dung are left on the premises for the use of the incomer (a). The meadow land, where not irrigated, must be

(a) Mr. Turner, in his evidence before the Committee of the House of Commons, states as follows:—

"5043. Is not the ordinary course this—that they break up land, take as many white crops as they think proper, and let it lie down till the natural fertilities of the soil are re-

stored?—It may be so in some isolated districts of Devonshire.

"5045. The manure becomes the property of the landlord?—Yes.

"5046. When the tenant leaves his farm?—No; where they are tenants at will from year to year the tenant is subject to six months'

manured with dung or compost, after every alternate cutting for hay. *Arable*.—In some districts, where the soil is favourable to the growth of turnips, the custom is now becoming general of following every white or grain crop with a green crop or seeds; but, in inferior districts, it is not considered contrary to the custom of the country to take two white straw crops in succession.

*Rotations of Crops* vary very much. In the best districts, wheat, green crop, barley, seeds; the clover arish being again ploughed for wheat. In the ordinary or inferior districts, wheat, barley or oats, seeds, or sometimes an intervening green crop, and another crop of oats or barley, and then laid down for two or three years. On land of a still coarser description, wheat, oats, seeds, and the land laid down from five to ten, or even more, years; and in this, also, a green crop and another grain crop may be sometimes added.

[I am indebted for my knowledge of the customs of Devonshire to Mr. Badcock, of St. Stephen's, Launceston.]

DORSETSHIRE.—(*Compiled from the Evidence of Mr. Waterson, of Dorchester, Agr. Cus. Rep. 310; and from Messrs. Kennedy and Grainger's Practice of Tenancies.*)

*Lady-day Tenancies. Outgoers and Incomers*.—The manure usually belongs to the farm. The outgoing wheat or barley crop is generally taken, unless by some special agreement: it is valued on the ground and taken off: it is generally worked off by the outgoing tenant. No compensation is allowed by the custom for artificial manures or permanent improvements. The enterprize of this county may be judged by the complaint that the farmers can scarcely get any crops at all until the land is chalked; that the benefit lasts from fifteen to twenty years, but that it costs 40s. an acre.

In Messrs. Kennedy and Grainger's work, it is stated that the usual entry is at Michaelmas, with privilege of commencing ploughing for wheat at Midsummer. On the western side of the county the entry is more usually at Lady-day, the

notice; and whenever the six months' notice is given there is an auction, and the tenant sells off everything.

"5047. He is allowed to sell the manure as well?—Yes; at least they

do it."

The reader may possibly be more successful than I have been in forming an idea of Mr. Turner's opinion as to these Devonshire customs.

tenant going in at Candlemas to prepare for the spring crop. The same authority states that the custom is that the tenant shall leave the farm as he entered upon it; leaving the same quantity of grass seeds, the same number of acres for a wheat crop, and giving the same facilities of pre-entry which he himself enjoyed. He may not carry away hay or straw, nor take two successive crops of the same kind of grain. In the eastern part of the county the tenant is bound to sow turnips or some other green crop in his wheat stubbles.

A common rotation of crops is wheat from a two-years' old clover graton, turnips (or tares), barley (or oats), seeds. In the west, a more usual rotation is wheat, oats, fallow (or turnips), barley, seeds.

I am sorry to be able to give no better or more authoritative account of the customs of this county; but the land agents, to whom I have applied, have been either unable or unwilling to afford me any useful information upon the subject.

**DURHAM.—Tenancies.**—Farms belonging to lay-owners are generally held from May-day (13th May). Rentals, half-yearly. Landlord repairs main walls, timbers, and roofs; tenant hauling materials gratis, and doing all other repairs.

**Outgoers and Incomers.**—The incomer has power to enter upon and plough the land intended for fallow from and after the 1st December preceding that term; the pasture land on 5th of April; and the meadow land, and all the houses and premises, on the 13th day of May. The value of the seeds to be paid for, and not to be eaten after the harvest preceding the quitting.

The away-going crop is not generally a custom; it altogether depends on the rotation of cropping. Where cultivated in four orders—viz., fallow, wheat, clover, oats—the off-going tenant takes half of the tillage-land, viz., wheat and oats; but if cultivated in the three-course system, then he takes two-thirds.

The entering tenant generally takes all the manure bred during the last six months of the term, and the share of the away-going crop—both free of charge.

There is no custom to allow removal of buildings, or to give compensation for permanent improvements or misapplied manures.

Lands held under the prebends or canons of the Durham Cathedral are held from the 29th of September upon leases from year to year.

These leases have penalty clauses against breaking up permanent grass lands, or cultivating otherwise than as directed by the lease; that the lessee shall repair, excepting the main walls, timber and roofs of the buildings, which the lessor is to repair; the lessee leading, gratis, all materials. The tenant to dress the meadow lands annually with one-third the manure produced on the premises, and not to mow more than once a year; to leave the manure on the farm without compensation; to permit incomer to enter to sow grass or clover seeds on land sown with wheat or barley at the usual season; not to cut or fell trees or saplings, nor remove fodder, nor assign or underlet. That outgoer may reap growing crops, thrash them out, and leave the straw. That all hay, straw, turnips, potatoes, and green crops shall be left; and that these, and also the ploughing, working, and preparing the tillage-grounds in course, for fallow and grain crops, shall be valued and paid for by the next incomer.

*General Rotation of Cropping—Four-course system.*—Fallow, wheat, clover, oats, or beans.

*Three-course system.*—Fallow (turnips or potatoes), wheat (or barley), oats (or clover, pulse).

System now very much followed on the poor and middling description of lands:—one-third fallow, one-third wheat, one-sixth oats, and one-sixth clover; the two latter alternately.

[I have obtained this information from Mr. G. Y. Wall, of Durham, and from the evidence of Mr. G. H. Ramsay before the House of Commons Committee on Agricultural Customs.]

*Essex.*—(Compiled from the Evidence of Mr. Hutley, of Witham, given before the Agricultural Customs Committee, and from Messrs. Kennedy and Grainger's Practice of Tenancies.)

*Michaelmas Tenancies.*—Rents are payable quarterly; but the actual payments are half-yearly. Upon large estates, the rents due at Michaelmas are paid on New Year's-day, so that a quarter's credit is given. But this is no binding custom.

*Repairs* are usually done by the tenant, the landlord finding bricks, tiles, and timber.

*Outgoers and Incomers.*—The outgoer prepares the fallows, and is paid for labour and manure. There are no other allowances. It is not usual, and certainly not customary, in Essex to give compensation to the outgoing tenants for the purchase of artificial manure and food. "Essex has plenty of enterprise and plenty of capital, if the farmers could hire the land with tenant rights (b)."

Messrs. Kennedy and Grainger's account of the customs differs slightly from Mr. Hutley's. They say, that the incomer has the hay, the wheat, or other Michaelmas crops, the turnips, and young seeds all valued to him. He has to pay also for all dung and manure in the yards, and for manure and labour expended upon land during the summer for a Michaelmas or turnip season.

*Obligations and Restrictions as to Culture.*—The custom is, that a tenant shall dress and fallow his land after every third crop, and never take two white crops in succession. He may now manure or graze his pasture land as he thinks fit, and may sell off hay and straw, bringing back manure in exchange, load for load. In some parts two loads of dung are required for one of straw.

*Rotation of Crops.*—Special stipulations are common, and rotations often laid down. A usual rotation, is turnips, barley (or oats), seeds, wheat, tares. Where turnips cannot be grown, then fallow, wheat, seeds, oats.

GLOUCESTERSHIRE.—(Contributed by Mr. Richard Hall, of Cirencester.)

*Tenancies.*—Time of entry varies.

The takings are usually Lady-day or Michaelmas, but the Michaelmas-taking prevails. There are a few cases where the entries are Lammas and Candlemas.

*Rental.*—Rentals half-yearly. The rent which becomes due at Lady-day being paid about Midsummer, and that which becomes due at Michaelmas being paid about Christmas. It was formerly the custom to allow half a year's rent in hand, but this practice is becoming very rare. Farms are generally

let from year to year. Leases for a term do not prevail to any extent.

*Repairs.*—The landlord usually repairs the exterior of the farm house and the farm buildings, the tenant hauling the necessary materials and finding straw for thatching. The tenant keeps in repair the glass of the windows and the interior of the farm house, the hedges, gates, pales, rails, mounds, and fence-walls, the landlord finding timber in the rough for the purpose.

*Outgoing and Incoming Obligations and Restrictions upon Tenants, as to Culture.*—The outgoing tenant is bound to cultivate the farm in a good and husbandlike manner; and, according to the custom of the country, to cut and lay the live fences in regular proportions; to spend all the hay, straw, haulm, chaff, and the produce from green crops upon the premises—except the dung from the last year's crop, which should be left for the benefit of the incoming tenant.

It is customary with a Michaelmas tenancy to hold over the barns, stalls, and stack-yards, and a portion of the stable-room, and frequently parts of the farm house, until the month of June after the expiration of the tenancy, for the purpose of threshing out and consuming the last year's crop.

The incoming tenant has usually permission to sow grass seeds with the last year's spring crop of corn, the outgoing tenant harrowing them in gratis.

The incoming tenant has permission to enter upon that portion of the arable land in course for turnips on the 1st of December; and to have a portion of the house, and to enter upon the land in course for wheat, on the 1st of August preceding his tenancy.

With a Lady-day tenancy it is customary for the outgoing tenant to hold over the barns, &c., until June; and the incoming tenant has permission to enter upon the land in course for wheat, on the 1st of August.

It is frequently the practice to introduce into agreements for yearly tenancies now, that the outgoing tenant shall sow and cultivate the land in course for turnips; and plough and prepare for the wheat crop; being paid for the same by valuation, and the incoming tenant finding the seed wheat.

On the hill portion of the county, where the soil is light



and thin, a six-field course of husbandry is pursued; namely, one-sixth kept constantly in saintfoin, and the remaining five-sixths in the following rotation:—wheat, turnips, barley, or oats. Seeds sown for hay, and seeds fed.

On the better description of soil a four-field system is frequently adopted; namely, wheat, turnips, vetches or root crops, barley or oats, and seeds. On the dry soil, in the vale, this latter system is also carried out; but on the strong clay soils, two crops and a fallow, or three crops and a fallow, namely, wheat, beans, wheat, fallow, are the usual course. The custom with a Lady-day tenancy, of taking an off-growing crop, is exceedingly rare, a consideration having been paid to the parties interested to get rid of it.

HEREFORDSHIRE.—(*Contributed by Messrs. Tench, of Ludlow.*)

Tenancies vary, commencing at Christmas, Candlemas, and Lady-day; but more generally at Candlemas.

Rents received half-yearly.

Tenant keeps and leaves the house and buildings in repair, upon being supplied with timber in the rough, and other materials at the quarries or kilns; landlord first putting them in order.

Tenant may not top, lop, or injure timber or saplings (willows excepted).

Not to break up any meadow or pasture land without permission from landlord.

Outgoer must lay up the young clover of the last year's growth on the 1st day of November, and the meadow lands on the 25th day of December, before quitting. He takes one-third of the arable lands for an off-going crop, first setting out the tithe or tenth stack. He is allowed to stack the same, and the use of a bay and barn, to house and thresh, until the 25th day of March following the time of quitting.

The custom requires the tenant to spend upon the premises in each year all the hay, straw, and haulm arising from the farm, properly reduced into manure; and, on quitting, to leave the same for the use of the incoming tenant, being allowed the use of a boosey pasture, or pastures, according to the size of the farm, until the 1st day of May following the expiration of the tenancy; and the use of a lodging room, and of the kitchen for a servant to reside in, for the same period.

Incomer pays the cost price of clover seeds on entering, if laid up and protected, from the 1st day of November. He also has a right of pre-entry to plough stubbles, and to do any usual husbandry, after the 2nd day of November, before quitting.

*Rotation on Light Soils.*—Wheat, turnips, spring wheat or barley, clover.

The best rotation on the strong soils of this county is set forth in the table below, the total of the land being twenty-four acres.

Acres.	First Year.	Second Year.	Third Year.	Fourth Year.	Fifth Year.	Sixth Year.	Seventh Year.	Eighth Year.	Ninth Year.
8	Wheat	Turnips	Spring wheat or barley Oats	Clover	Wheat	Beans	Oats	Fallow	Same Culture as First Year.
8	Wheat	Beans		Fallow	Wheat	Turnips	Spring wheat & seeds. Fallow	Clover	
8	Turnips	Spring wheat or barley Oats	Clover	Wheat	Beans	Oats	Fallow	Wheat	
8	Beans		Fallow	Wheat	Turnips	Spring wheat & seeds. Fallow	Clover	Wheat	
8	Spring wheat & seeds.	Clover	Wheat	Beans	Oats		Wheat	Turnips	
8	Oats	Fallow	Wheat	Turnips	Spring wheat & seeds. Fallow	Clover	Wheat	Beans	
8	Clover	Wheat	Beans	Oats		Wheat	Turnips	Spring wheat & seeds. Oats	
8	Fallow	Wheat	Turnips	Spring wheat & seeds.	Clover	Wheat	Beans		

HERTFORDSHIRE.—(*Contributed by Mr. Edward Lewis, of Hertingfordbury.*)

*Tenancies.*—Michaelmas (New) predominates with right of pre-entry at Lady-day to plough fallows.

*Rentals.*—Made payable quarterly, but paid half-yearly.

*Repairs.*—Done by tenant; materials found by landlord.

*Outgoer and Incomer.*—Tenancies terminating at Michaelmas, the outgoer has the last year's crop. The incomer has the right of sowing one-fifth of the arable land with seed, and to one-fifth of the same as fallow. No custom to establish any allowance for buildings, draining, or permanent improvements.

*Restrictions.*—Ploughing up grass land, and selling manure and Lent corn-straw.

*Obligations.*—No obligation as to manuring or culture, unless specified by agreement.

*Rotation of Crops.*—The four-course system general,

although a fifth crop after wheat, (either beans, peas, or oats,) prevails in some districts.

**HAMPSHIRE.**—(*Abridged from Kennedy and Grainger.*)

*Michaelmas Tenancies*, with pre-entry at May-day; outgoer retaining threshing accommodation till succeeding May-day. Yearly rentals. Tenant keeps outbuildings in repair, landlord finding timber.

No allowance for manure left: hay and straw must be consumed: two successive wheat crops prohibited: no restriction as to seeds to be sown.

The usual rotation is—fallow, wheat, oats (or barley), seeds. On the turnip land—wheat (from a two-year-old ley, mucked, fed and folded upon), turnips (or tares), barley (or oats), seeds.

**HUNTINGDONSHIRE.**—(*Abridged from Kennedy and Grainger.*)

*Old Lady-day tenancies*: outgoer retaining the corn crop, and the barns and yards, till Midsummer twelvemonth. Half-yearly rentals. Landlord repairs outbuildings.

Outgoer's rent ceases at Old Lady-day. He retains all the straw crops which he has sown, but feeds all the straw, and leaves the manure. He is paid for young seeds and for fallow ploughing.

There are customs against ploughing-up pasture or taking away hay or straw. No restrictive customs as to cropping, and agriculture very bad. The common rotation is—fallow, barley (or wheat), seeds, beans, wheat. Another rotation is—fallow, barley, beans, wheat, oats.

**KENT.**—*Tenancies.*—Michaelmas, either Old or New.

*Rentals.*—Half-yearly. Reserved quarterly in leases.

*Repairs.*—Tenant keeps in repair all buildings; the landlord finding rough timber, bricks, tiles, and lime.

*Incomers and Outgoers.*—Incomer takes the hay and straw of the last crop at feed value, and pays for all unused manures. He pays the year's rent and taxes upon all fallows made in the last year, and for all tillages of every description. In Mid and West Kent it is also a custom to pay half fallows; but this does not extend to the Weald. It is a general custom to pay half manures; that is, one half part of what the dung would have been valued at, had it been valued the year before.

Artificial manures are paid for according to their durability. Guano valued at one-third, after one crop ; of bones or lime, half ; and for dung, marl, or mould, nothing after one crop.

The incomer pays also for clover or other seeds sown in the last spring, all hop-poles on the hop-grounds, all underwood down to the stub ; and, on the chalk hills but not in the Weald, for saintfoin, clover, or grass lays.

No allowance is made for the improvement of buildings. If a farmer builds an oast, he must leave it.

*Drainage* is performed either with tiles or wood. If with wood, the tenant is allowed the cost, deducting one-fourth for every year ; if with tiles, deducting one-tenth for every year.

*Restrictions and Obligations.*—It is the custom that hay and straw be consumed on the farm, unless an equivalent of dung be brought in, in lieu of the fodder sold off. It would be contrary to the custom to take more than two white crops in succession, or to break up permanent grass.

*Rotation of Crops.*—The cropping varies. In the heavy lands, the four-course system is common : on the lighter soils, the five-course, avoiding more than two white crops in succession. Perhaps the most prevalent rotation, however, is turnips on fallow, barley, beans or peas, wheat, seeds, wheat, oats. On the best soils, summer fallows are rarely made.

[I have compiled this account of the customs of Kent from information afforded me by Mr. Lake, of Sittingbourne, and Mr. Crouk, of Seal ; and also from the evidence of Mr. Hatch, of Tenterden, as printed by Mr. Pusey's Committee. I subjoin also an extract from the evidence of Mr. William Barnes, of Staplehurst ; Rep. p. 356.]

Q. Explain to the committee the different customs of compensation.

A. In the Weald of Kent nearly everything is paid for. In the eastern part of Kent the custom is not quite so extensive : for instance, the dung is not paid for ; it is the property of the landlord, and the tenant is paid for labour to it only ; this difference does not exactly take place where the division of the county for other purposes is taken. I am speaking generally ; there may be a few exceptions. We have another mode in what we term Mid Kent. In the Weald of Kent, the payments made there to the out-going tenants are for the underwood

down to the stub, the fallows, including rent and taxes, and manures, and generally speaking half manures, but they are in some cases now being bought off by the landlords; hop poles, hay, straw, ploughings, seeds sown, dressings, young hops planted, seasons, and generally we pay for those things that we consider to be an improvement for the land, which the tenant incoming would derive the benefit of—such as striking up land to let off the water—and if the hop land is also struck up, and laid up round, to take off the water, that is paid for too.

Q. Have you any compensation for draining there?

A. Draining has been introduced into the Weald but a few years; when I say introduced, I mean generally; a great deal has been done within the last seven years; and the question very frequently arises, when we go to take a valuation, whether or not the outgoing tenant could claim for the drainage. I have had it disputed in many instances, and lost it, if the tenant did not pay for it on entering, and had no agreement to be paid upon leaving; but if left to ourselves, as valuers, we always charge the incoming tenant with it, and in doing so, if it be wood, we allow four years to run out: if one year is fallow it goes over another; if one crop is taken, we give three-fourths of the outlay; and if two, half: if three, three quarters; and if four, nothing is allowed.

Q. You are understood to say, that a valuer always does agree to allow for drainage, if no objection is taken?

A. Invariably we think it right to do so.

Q. If objection is taken, what happens then?

A. The outgoing tenant loses it, unless he can show an agreement specifically pointing out that he shall be paid for it, or paid for it upon entering upon his farm.

I can point out in the Weald a mode of paying for different things, different from other parts; for instance, hay passes from the outgoing to the incoming tenant at what is called a feed price, which is a mode that I have not met with in other districts, and I value in three or four counties. I have not met with that in other counties, though it prevails throughout Kent and Sussex; feed price is a price between what we may term the foddering and dung price and sale price; that is to say, if it was worth 4*l.* a ton, that would be

50s.; the dung fallows in the same way: our dung is valued in the Weald of Kent and Sussex in the same way, at a feeding price.

Q. Is the dung valued according to measure, or partly according to measure and partly according to quality?

A. Both. We always measure the dung and make the best inquiries we can of what the dung is made of; if cake has been fed, we pay more than for manure made in the straw yard.

Q. Then it is an encouragement to a tenant to keep up the condition of his land, and feed his beasts well; if that is considered in the quality of dung, and he gets a corresponding improvement in the price?

A. Our difference in price is not so great as the difference in the quality of the manure.

Q. As far as it goes, it is so?

A. Yes; as far as it goes, it is so.

Q. Should you not consider it a discouragement to the tenant if the dung all belonged to the landlord, whether made with oil cake or water only, and all went to the incoming tenant for nothing?

A. It would.

Q. Must not that be a great inducement to a tenant to lower his farming in the last year of his tenancy?

A. It must: there is no question about it.

Q. Then if this system of compensation as you have described it were made more certain, would it not tend to the encouragement of good farming generally?

A. Yes; I wish to be understood that the custom is dependent entirely upon whether the tenant can show he is entitled to the custom. We have many painful instances of the tenants taking farms without securing themselves at the first outset, and valuing them out with loss, consequently.

Q. Can you state these cases to the committee?

A. Yes.

Q. Give them without mentioning names.

A. I remember one case in particular: there was a fire upon the premises, and the whole of the premises were burnt down except the farmhouse. The landlord built up what was absolutely necessary to go on with the farm, and left the tenant to do the other things: he did so, and shortly after he

had notice to quit. I am speaking of cases coming under my notice. I know many more. I was called upon to value him out, and he requested to be paid for the erection of the minor offices, which were built by the tenant's timber as well as by his labour. The garden was also laid out, and the fruit-trees planted: a considerable expense it is well-known will arise in filling up those small things in a farm-yard and premises, none of which the steward would allow the outgoing tenant for.

Q. That was because there was no special agreement?

A. Yes.

Q. There is no custom at all?

A. When I speak of the custom of the Weald, I speak of the custom when the lease states that the tenant is to go out according to custom. It is very common, in our agreements, that the tenant should be allowed according to the custom of the county; but we do not consider him entitled to that unless he can show something by which he is entitled.

Q. Then it amounts to no custom except by agreement?

A. Just so.

LANCASHIRE.—To define the customs of this county with any degree of accuracy, at the present moment, would appear to be an impossibility; for it is presumed that there is no county in England in precisely the same state of rapid transition from a neglected to an improved system of husbandry. Until very recently the agriculture of this county has stood in so secondary a position to its manufactures as to have afforded no inducements to the investment of capital. Under the present altered circumstances of the country, improvements of every description are progressing with singular rapidity; and in speaking therefore of its customs, it must be understood that these remarks have reference rather to the past than the present time.

Candlemas (2nd February) is the usual term for entering upon an occupation. The offgoing tenant, however, retains the use of the farm onstead, together with some very small portion of land, until May-day. Rent is paid half-yearly; landlords doing all repairs, except that occasionally the tenants lead the materials. The offgoing tenant is, by custom, entitled to two-thirds of such wheat as is sown upon fallowed

land. He has not, however, any claim to a similar proportion of the wheat crop, if raised otherwise than after naked fallow. He is bound by custom to leave upon the farm the same quantity of dung, and the same extent of seeds, which he found at his entry. Tenants are not ordinarily estopped by custom from selling off hay or straw. They are bound, however, to manure all meadow-land periodically, and in some districts annually. The customs as to arable husbandry are various. The two most remarkable are, that in certain districts, tenants are restricted by custom from having more than a certain proportion of their farm in tillage. They are, however, unrestricted as to the cultivation of this fixed proportion of the farm; whilst, in other districts, tenants are authorized by custom to plough the whole of their occupation, but are restricted not to take more than two corn crops before sowing it down again. They are, however, unrestricted as to the period during which it is to remain in grass when sown down. Potatoes are grown to a great extent, and generally as a preparation for wheat. A crop of oats is frequently taken after the wheat, when the land is fallowed for barley. The systems of cultivation pursued are very various, and have not been generally in accordance with the most approved courses of husbandry. It may be presumed that few landlords will continue to trust to the custom of the country for the protection of their interests, after having expended large sums in drainage or other improvements; but that they will have recourse more generally to agreements, prescribing the courses of cultivation, than they have heretofore thought necessary.

[I am again indebted to my friend, Mr. Blamire, for revising this statement of the customs of Lancashire.]

LEICESTERSHIRE.—*Tenancies*.—The usual time of entry is Lady-day; but in some cases the entry is at Michaelmas.

Upon some estates, a provision is made that the landlord or the incoming tenant shall have power at any time after the 10th of October, previous to the termination of the letting, to enter upon the lands proper to be sown with wheat; and at any time, after the 1st of February previous to the termination of the occupation, upon the lands proper to be sown with spring corn, except any lands whereon turnips may be then growing; a fair allowance being made to the outgoing



tenant for the value of the pasturage of the land taken for the above purposes : in the absence of special stipulations there is however no customary right of pre-entry.

*Rentals.*—The usual time for the payment of the rent is, for the rent due at Michaelmas, from the middle of November to the end of December ; and, for the rent due at Lady-day, from the first day of June to the middle of July.

*Repairs.*—The tenants are generally required to keep the house and all the other buildings, except the roofs, outside walls, and main timbers, also all the gates and fences, in repair ; but it is not unusual for the landlord to give timber in the rough, and other materials, for such purposes.

*Outgoing and Incoming Customs.*—It is usual for the tenant to be allowed, on quitting, the cost price and expense of sowing all grass and clover seeds sown in the preceding spring ; and for all ploughing, harrowing, or other work done by him, and the full cost price of any lime, or manure, which may have been purchased and spread in the preceding season, and also for the carriage of the same ; also for any crop which may be growing on the land : or, if any of the land be in dead-fallow, the tenant is paid one year's rent, and payments for such land in addition to the allowance for labour and manure. An allowance also is made for any draining which may have been done by the tenant, with the consent of the landlord, in the following way : if he quits at the Lady-day next ensuing, and no crop has been taken, the whole expense including the carriage of materials ; if he continues in the occupation of the farm for one whole year he shall be allowed three-fourths of the expense of the labour and the cost of all the materials ; if two years, one half of the expense of the labour and the cost of the materials ; if three years, one-fourth of the expense and the cost of all the materials ; but after that time no allowance to be made unless the draining shall have been deeper than is usually required in this county, and in that case an agreement as to allowance is generally made before the draining is set about.

*Restrictions and Obligations.*—Tenants may not plough up lands laid down to grass more than five years, nor may they sell off any hay, straw, or turnips. They are also frequently, by agreement, restricted from underletting without the consent

of the landlord, and they are prohibited from cutting or lopping any trees, &c.

*Rotation.*—The rotation of crops varies according to the nature of the soil: the usual course upon the light soil is—first year, turnips; second year, barley; third year, clover mowed or grazed; fourth year, clover grazed; fifth year, oats; sixth year, wheat; three tons of lime having been spread upon each acre of oat stubble before the sowing of the wheat: or first year, turnips; second year, barley; third year, clover; fourth year, wheat. Upon the strong clay soils the course is—first year, dead fallow; second year, barley or wheat; third year, clover; fourth year, beans; fifth year, wheat: or first year, fallow; second year, wheat; third year, beans; fourth year, wheat: in either of these courses the bean stubble should be manured before the sowing of the wheat.

[I am indebted for my account of the customs of Leicestershire to Mr. Thomas Miles, of Leicester.]

LINCOLNSHIRE.—(*Contributed by Mr. John Higgins, of Alford.*)

*Tenancies.*—Yearly, commencing at Old Lady-day; with houses and homesteads, at Old May-day.

*Rentals.*—The rents which are *fixed* (not corn rents) are paid at Christmas and Midsummer, or three months after they become due.

*Outgoers and Incomers.*—The incoming tenant has the option of pre-entry, to sow wheat after Michaelmas; and upon the lands intended for fallow, at Christmas; on paying a reasonable sum for the sheep-keeping (if any) thereon to Lady-day.

The ancient practice of the outgoing tenant being entitled to a following or way-going crop, after the expiration of his tenancy, is become nearly extinct; the same having in most cases been compensated for, and in no cases have new claims been created.

The prevailing and most general custom is, for the outgoing tenant to be paid the value of the seed and labour (including the carting of manure), together with the value of young clover and other grass seeds sown upon the land for the next year's crop or herbage; but beyond this there are,

*Special Allowances* for unexhausted improvements, of which the outgoing tenant has not derived the full benefit, which are not strictly customary, but the propriety and advantage of which are becoming daily more manifest. They are generally settled by special agreement, varying in the extent and amount of such allowances; the more general proportions being as follows:—viz.

*Bones or Guano*, as manure (exclusive of carriage), to extend over three years from their first application, viz., reducing one third part for every year's use.

*Lime*.—Four years, reducing one-fourth part for every year's use.

*Marl or Chalk*.—Seven years, reducing one-seventh part.

*Oil-cake*.—The use of, and the allowance for this article, is of recent origin. The practice is for the incoming tenant to pay *one moiety* of the consumption of the last year, or one third part of the consumption of the two last years, which is most approved; but inasmuch as oil-cake is expensive, and its effect upon the soil as a manure is still not sufficiently developed, the proportions herein stated are perhaps the most proper.

*For Under-draining*, with tiles found by the tenant, six years, reducing one sixth part for every year's use. If done with sods or thorns, three years; and provided the tiles be supplied by the landlord, the tenant performs the labour without claiming any allowance.

The foregoing allowances are generally agreed upon at the time of letting; and are specified and endorsed on the agreement: when not so settled and agreed, they are left to the arbitration of valuers appointed by each party (or their umpire), to settle and determine the value of the fixtures and tenant rights belonging to the outgoing tenant on quitting.

*Restrictions*.—Tenants are generally restricted from ploughing-up grass, felling or lopping trees, selling hay, straw, stone or gravel (except to the surveyor of highways of their parish); and from underletting any portion of their farms, without the permission of the landlord.

*Repairs*.—The general custom is for the tenant to keep and maintain during his occupancy; the landlord having first provided suitable buildings, and put them into repair.

*Rotation of Crops on Lincoln Heath, the Wolds, and other light Soils.*—The succession of crops is generally turnips, barley, seeds, and wheat. And provided the land be in high condition it is turnips, barley, seeds, oats, and wheat.

*In the Marshes or Clayey Soils.*—Fallows, wheat, clover, oats (or beans); or provided the land be in high condition, and the bean crop drilled wide and effectually hoed, a crop of wheat is taken after the beans, before a fallow.

*In the Fens or Peaty soils.*—Cole, oats, wheat, and occasionally beans, according to the condition of the land; otherwise a clover crop between any two white crops of corn (c).

NORTHUMBERLAND. — (*Contributed by Mr. Snowball, of Netherwitton.*)

*Tenancies.*—Although the 13th day of May is the term from which by far the greatest portion of the farms in Northumberland are let, and on which day the tenants enter upon the substantial part of their farms, there are others who adopt Lady-day (the 25th of March) as the time of entry. The Duke of Northumberland's estates are principally held from the latter term, the tenants entering to the crops.

*Rentals.*—The rents are generally paid half-yearly; but, upon one large estate in the county, the rents are received quarterly. The tenants who are entitled to away-going crops, as they are upon all arable farms, have principally a running half-year, viz., the first half-year, due at Martinmas, is not generally paid until April or May following. It is, however, otherwise upon grazing or sheep-farms: in these cases the rents are paid as they become due.

Upon some of the heavy clay lands, cultivated as wheat

(c) Mr. Higgins remarks upon this concluding paragraph of his very valuable account of the customs of this important county: "These rotations of crops form the general custom; it is not however restricted and enforced by landlords upon tenants at will. The landlord having a better security for good management in the confidence of his tenant; and in the liberal outlay of the tenant's capital in bones, oil-cake,

and other artificial manures; and this good understanding between landlord and tenant prevails throughout Lincolnshire in an eminent degree upon old family estates, and is found more satisfactory than leases."

I may add that Mr. Parkinson, of Ley Fields—no mean authority among agriculturists—states a similar opinion before Mr. Pusey's committee.

farms, the rents are calculated upon the average price of corn. But there are not many instances of this mode of paying rents in Northumberland.

*Repairs.*—All the main walls and main timbers are kept in repair by the landlord, the tenant carrying all materials.

*Outgoers and Incomers.*—The incomer has a right of pre-entry after the 1st of December, to sow clover and grass seeds upon the spring corn, and to harrow and roll, lead out manure, plough the land in course for fallow, and scale and dress the meadows. Outgoer is paid for grass seeds, keeping the same uneaten, takes away-going crop, which is laid and forked to the stacks by the incomer, who receives the straw as it is threshed, retaining the use of barn, stabling, stackyard, and a cottage, until the 12th of May.

*Restrictions and Obligations.*—The usual custom prevails against breaking up old turf, removing manure, or hay or straw from the farm. The course of tillage is usually matter of special agreement.

*Rotation.*—The rotation of crops varies in different parts of Northumberland; as, for instance, in Tweedside and the north part of the county, as also on the south near to the river Tyne, and in other parts where the land is suitable to the turnip culture, the part sown with clover and grass seeds lies for two years in grass, and is then called the five-course. And on wheat soils, where the four-course system is not adopted, the following rotation is practised, viz., first, fallow; second, wheat; third, beans, peas, or tares; fourth, fallow; fifth, wheat; sixth, clover; seventh, oats. This is called the seven-course, and is found to answer well on clay soils.

NORTHAMPTONSHIRE.—(*Abridged from Kennedy and Grain-ger.*)—Lady-day tenancies. Half-yearly rentals. Landlord repairs outbuildings.

Incomer takes the wheat crop (at the value of the seed and labour), the grass-seeds on the ground, and pays for all fallowed land, from which he receives the whole of the benefit. He may plough for his spring crop, but has no right of pre-entry. The manure is left.

The custom, with some exceptions, is not to sell fodder off, nor to exceed two crops to a fallow.

*Rotation.*—On the strong land, fallow, wheat, beans. On the loam, turnips, barley, seeds, wheat.

NORFOLK.—(*Corrected by Mr. Robert Pratt, of Norwich.*)

Michaelmas tenancies, and no right of pre-entry. Half-yearly rentals, and landlord repairs out-buildings, the tenant frequently paying a moiety of the labour.

Incomer pays for the hay, turnips, seeds, or clover leys (if the turnip crop fails, then nothing for labour). He carries out the last year's corn crop when threshed and sold, or ready for market, and receives the straw, chaff, and colder in consideration. He receives the manure without payment.

The custom as to culture in this county is strict. All hay and straw must be spent on the premises. The tenant is bound by the custom to have a fourth of the arable land in wheat, a fourth in barley or spring corn, a fourth in seeds, and a fourth in turnips. In some places the culture of oats is restricted or prohibited.

The only unnecessary inconveniences to an incomer under those customs are, that he may be compelled to take an unlimited quantity of hay, and that he may have to plough all his land for his wheat crop after Michaelmas.

*Rotation.*—Turnips, barley (or oats), seeds, wheat.

NOTTINGHAMSHIRE.—(*Compiled from information supplied by Mr. Woollott Wilmot, and Mr. John Parkinson, of Ley Fields, Newark.*)

Half-yearly rentals. Tenant keeps outbuildings in repair, except the walls and the timber of roofs. Rents are usually paid in money; but one of the largest proprietors lets his estate in a few of the best parishes on a corn rent, and his tenants are allowed to retain half a year's rent in hand: but this is an exception, and not the custom.

Tenancies vary. The most usual are from Lady-day; but in the north the tenant sometimes takes the land at Michaelmas, and the house at Lady-day.

1st. *Michaelmas Tenancies.*—Upon these farms the incomer pays by valuation for all the seed and labour bestowed upon the land, for wheat, or for clover or other grass seeds, for all ploughing done before Michaelmas, for all unexhausted arti-

ficial manures (such as bone-dust and rape-cake), reckoning their endurance at three years. After turnips the outgoer is allowed all the rent, labour, seeds, and manure (if manure does not belong to the farm), deducting therefrom one half the value of the turnips, if the crop was fed; and the full value of the turnips, if they were led off the farm.

The incomer has an option as to taking hay and straw; but, if he refuses to take them, the outgoer must consume them on the premises. The outgoer retains yards and buildings till May-day.

Upon the Michaelmas farms the manure for the most part belongs to the farm; and, where that is so, there is a custom to allow the outgoer one fourth of the oil-cake consumed on the farm in the year when no crop taken. A custom appears to be forming in this county to allow an eighth the value of oil-cake in the second year; but it can hardly yet be said to be general or compulsory.

2nd. *Lady-day Tenancies*.—In these farms the incomer usually pays for all the manure which he finds in the yards. In other respects the customs appear to be alike.

It is a general custom throughout the county that no hay or straw may be removed from the farm.

It is also a general custom (*d*) to allow an outgoing tenant the cost of any drainage that may have been properly done, deducting one-seventh for every year of tenancy since the work done for shallow drainage, and one-tenth for deep drainage. Another method is, that the landlord supplies the tiles and pays the wages of a man to lay them, the tenant doing the team work and paying for digging out and filling up the drains. The tenant is repaid for his labour and team work if he do not reap a crop of corn or grass after the drainage is completed. The usual custom against breaking up old grass land obtains here.

It was formerly a general custom to allow away-going crop to the outgoer, but this has now been in many instances got rid of. On the Duke of Newcastle's large estates in this county, whenever a farm fell into hand the outgoer's crop was valued, the difference between the value of the crop and the

(*d*) Mr. Parkinson doubts this to be a binding custom, if the landlord should object.

if fallowed; one half, if a brush crop. But on the clay lands south of the Severn, the outgoer takes the whole wheat crop. In all cases, however, the incomer retains the tithe and settles with the tithe-owner, or pays the rent-charge.

The incomer pays the value of the seeds for the seeds upon the ground; but nothing, if sheep have been turned into them after November.

The custom as to dung varies. On the large estate of the Duke of Cleveland the dung and unconsumed hay and straw are valued. On the Duke of Sutherland's estate it all belongs to the farm. But in this respect the only general custom is, that a tenant quits as he took.

The incomer ploughs his own spring corn. He pays the outgoer for any lime laid on within two years; the whole value of last year's liming; one half of that of the year before. Opinions are divided whether this custom is general throughout the county. A common local custom is, that the tenant shall draw two loads of lime for every acre of fallow; but this is not universal.

The customs as to cultivation are, that hay and straw may not be removed. On the cold lands the tenant is restricted to two white straw crops to a fallow, with an intervening pulse crop. On the other lands the custom appears less definite; but the usual rotation is, turnips, barley, seeds (or peas), wheat. If upon a five-course, the seeds are down for two years.

[I am indebted for my information, as to the customs of Shropshire, chiefly to Mr. Wiley, of Wellington; Mr. Ashdown, of Uppington; and the Messrs. Tench, of Ludlow.]

*SOMERSETSHIRE.—In the north-east. (Contributed by the Messrs. Sturge, of Bristol.)*

*Tenancies.*—Principally Lady-day.

*Repairs.*—Landlord repairs roofs and outer walls, and finds timber in the rough for repairs to be done by the tenant. Tenant finds reed for thatching at a fixed price.

*Rentals.*—Half-yearly.

*Outgoers and Incomers.*—Outgoing customs various, and not well defined.

Outgoer sows land in course for wheat.



Incomer takes the crop, or pays for seed and labour, at a valuation.

Outgoer sows clover with last year's barley crop.

Incomer pays for the seeds and harrowing.

Incomer takes to hay and straw at a consuming price, and frequently to dung.

Rotation of crops, irregular.

Roots or fallow, wheat, barley, or oats; clover, wheat, or potatoes or roots; wheat, beans, or peas; wheat.

*In the north-west and central parts. (Contributed by Mr. Cotterell, of Bath.)*

*Tenancies.*—About sixty per cent. of the holdings are from Lady-day; twenty per cent. are from Michaelmas; ten per cent. from Christmas; and ten per cent. from Candlemas, or some other periods: but there is a strong feeling, on the best managed estates, to bring all the holdings to Lady-day.

There are but few leases, or agreements for leases. Not more than seven per cent. of the tenant farmers hold under them. Christmas is not an unusual time of entry on the grazing lands in the central part of the county.

*Rent.*—Payable quarterly. The period of credit given in the payment of rent varies from six weeks to six months; perhaps almost one-third of the landowners allow their tenants half a year in hand.

*Repairs.*—The custom is for the landlord to keep the roofs, main timbers, and main walls of the dwelling-house and out-buildings in repair; and the tenant to keep the interior, with fences, walls, hedges, drains, &c., in order (the same having first been put into good repair by the landlord), also gates and stiles; the landlord to find timber in the rough (*i. e.* unfelled timber), for the purpose.

In some parts of the county the tenant finds haulm for thatching.

Tenant does the hauling necessary for landlord's repairs, gratis, within a prescribed distance (from three to eight miles from the farm house).

*Outgoing and Incoming Obligations.*—These are very variable, differing sometimes in adjacent parishes; the following can only be taken as a general rule:—

*Wheat.—Lady-day, Christmas, and Candlemas Tenancies.*—Incoming tenant to pay for preparing for and putting in the crop; or outgoing tenant to hold the land in wheat until Michaelmas, and have the use of a barn for threshing out, leaving the straw on the premises; but in some cases outgoing tenant may remove the straw.

*Michaelmas Tenancy.*—Incoming tenant may enter to prepare for wheat, or he is to pay outgoing tenant for all ploughings and preparations.

*Barley and Seeds.—Lady-day, Christmas, and Candlemas Tenancies.*—Incoming tenant to pay the cost of seed, and labour of sowing such land as may be sown to seeds.

*Michaelmas Tenancy.*—Similar condition as to seeds. Outgoing tenant to have use of barn and some part of the yard for threshing out his crops, until Lady-day.

*Tillages.*—Generally all tillages to be paid for by incoming tenant.

*Manure* to be left without payment.

*Unexhausted Improvements.*—No custom as to these.

*Restrictions and Obligations on Tenant as to Culture.*—Not to break up old meadow and pasture under a penalty. Not to sell hay, straw, root, crops, &c., without leave from landlord, and then to bring back one waggon load of rotten dung for every load sold, or not to sell hay and straw without bringing back manure. Not to underlet, not to cut, top, or shroud maiden timber; but in the case of about half the tenancies of the county, tenants may shroud pollards. To properly cut, plush, and lay fences; not to grow two wheat crops together (*f*); not to mow twice in one year, nor later than the month of July, and in the grazing districts not to mow the old grazing land. In some of the upland farms, it is usual for the tenant to covenant to keep a certain number of sheep; but this condition is not general.

*Under Draining.*—No custom. The most usual plan is for the tenant to pay the landlord a per-centage on the cost; and in some cases the tenant finds labour and hauling, and the landlord material.

(*f*) Mr. Danger, of Wembdon, informs me that the custom of the county about Bridgewater is, that

“not more than two white or corn crops shall follow each other.”

*Usual Rotation of Crops.*—There is so little system in cultivating the arable lands of the county, that it is difficult to specify the usual rotation of crops. It is generally considered bad husbandry to grow two wheat crops together, and yet there are instances of wheat being grown on the same land for five, ten, or even fifteen years in succession. I think that this would be almost the only course of cropping that would be considered contrary to the custom of the county.

On the light soils, perhaps, this might be taken as the best acknowledged cropping—

Wheat, turnips, barley, seeds (one or two years) ;

Or wheat, barley, seeds (one year), turnips ;

Or wheat, oats, turnip, barley, seeds.

In the heavier lands—

Wheat, vetches, beans or peas, fallow ;

Or fallow, wheat, barley, seeds, or oats :

and in the deep heavy lands of the central parts of the county—beans and wheat are grown alternately for years. It is probable that in years to come there will be a considerable change in the course of cropping adopted, and that it will approximate to something like a system.

**STAFFORDSHIRE.**—Lady-day tenancies are almost universal in this county. There is no customary right to enter to plough for spring crops, but arrangements for this purpose often take place between outgoers and incomers.

*Outgoing and Incoming Customs.*—The incomer pays for young seeds when not eaten after November ; and for hay, straw, and manure at a consuming price, when the last is attached to the farm. Upon this point the practice varies. The tenant will quit as he took, if the terms of his entry can be proved ; if not, the custom will presume the manure to belong to the farm. The usual valuation in Staffordshire, of hay and straw left, is two-thirds the market price of hay, and one-third the market price of straw. Liming is allowed for upon a three years' valuation, if the valuers think it was beneficially applied ; and draining, if beneficial and properly done, is also allowed for ; but there seems to be no fixed rule of calculation. The outgoer takes away-going crop of wheat

(the breadth sown to be the proper proportion according to the rotation adopted), two-thirds of fallow wheat, that is, wheat sown on lands broken up before the 24th of June previous, and to one-half of all wheat sown on clover root or leys; whether the tenant be entitled to wheat sown on brush (*i. e.* land which has grown a corn crop in the preceding summer), or after potatoes and turnips, is a frequent source of dispute. The question whether the tenth of the crop shall be thrown out as tithe, or whether the outgoer and incomer shall pay the rent-charge according to their interest in the produce, is not yet settled in all parts of this county. The offgoer must leave the straw of the offgoing crop if the manure belong to the farm; but the custom gives him no accommodation to stack his produce or consume his straw.

There being no right of pre-entry, it is common for the outgoer to do what is called pin-following for the incomer; but unless some agreement has been made, there is no custom to the incomer to pay for this work. Pin-following is the same as a rough or bastard fallow, and may consist of one, two, or three ploughings.

*Culture Customs.*—There is a custom against breaking up old turf; and although it has been doubted whether such a customary restriction exists in Staffordshire, many recent cases have occurred in which damages have been recovered for its infraction. There is also a customary restriction against removing hay and straw, and the tenant has no right to the crop of the hedges.

In the breeding and dairy district about Alstonfield, the customs vary from those which obtain in other parts of the county. The tenancies are from Old Lady-day, the tenant does all repairs. There is no custom to forbid ploughing up pasture. The outgoer receives the value of all his improvements in fencing, draining, and liming. The fencing is calculated at ten years, liming and draining at six years. But if the land be ploughed, a crop is considered to exhaust one-third of the value of the liming; and after three crops no allowance is made.

*Rotation.*—The greater portion of Staffordshire consists of turnip and barley land, upon which the Norfolk system is

practised. The clays are exceptions to the general character of the county.

[To the foregoing statement, for which I am chiefly indebted to Mr. Thomas Turner, of Abbots Bromley—although it has also the authority of Mr. James Bromley, of Derby; Mr. Bennett, of Tutbury; and Mr. Nadin, of Lichfield—it may be useful to subjoin a more precise statement of the rotations, and some observations upon allowances for improvements, communicated to me by the first-named gentleman.]

“*Rotation of Crops.*—On strong heavy soils (clayey marls), which form a great proportion of North Staffordshire, the rotation *formerly* was:—

- 1st. Summer fallow, after two years' leys.
- 2nd. Wheat.
- 3rd. Oats or beans seeded.
- 4th. Clover mowed (or grazed).
- 5th. Leys grazed.

“Of late years some variation has been made, viz:—

- 1st. Fallow after oats and beans.
- 2nd. Wheat (seeded).
- 3rd. Clover (grazed).
- 4th. Oats on clover root.

Sometimes part of the fallow wheat is seeded, and part sowed with beans or oats; but the more general practice is to seed the wheat.

“On light and mixed soils—

- 1st. Turnip (after wheat).
- 2nd. Barley (seeded).
- 3rd. Clover (mowed or grazed).
- 4th. Leys grazed.
- 5th. Wheat on leys.

Sometimes wheat is *in part* substituted for barley after turnips, particularly on *rather* heavy soils, and wheat sown on clover root instead of two years' leys.

“As turnips are of recent introduction, the customary rotation on *light* soils must be comparatively modern.

“It would be a very partial view of the question, if I omitted to add, that for several years, the custom for allowances for artificial manures, draining, and improvements has been *pro-*

*gressively extending*; and, in my opinion, a general feeling of justice between man and man will soon establish a common consent to an equitable adjustment of all reasonable claims of outgoing tenants.

“It is usual to allow for draining when executed at the sole cost of the tenant of which he has not enjoyed the full benefit. The cost of lime for three years, viz. the whole cost in the last year, and a proportion in two preceding; bones for a longer period than other artificial manures (as Guano, &c.), because the benefit is more lasting.

“The allowances for draining grass land should extend over a larger period than arable; because the benefit, although ultimately as great, is not so *immediate*.

“I have only to add my strong conviction, that it is impossible to legislate, compulsorily, to meet these multifarious and complex questions, without inflicting great injustice, placing landlords and tenants in a state of lasting opposition, and perpetuating a system of litigation to which it is impossible to set a limit.”

SUFFOLK.—(*Abridged from Kennedy and Grainger.*) Old Michaelmas-day tenancies. Annual rentals. Landlord provides materials for repair of outbuildings, except straw for thatch. Incomer takes all the crops upon the ground and pays for the work upon them, the outgoer producing his account of work performed. The dung and hay are valued to the incomer. The straw and chaff of the last crop are left to the incomer, in consideration of threshing the corn and carrying it to market.

The custom restricts the removal of hay or straw, and forbids exceeding three crops of corn to a fallow. There is no other customary restriction: but the usual rotation is, the Norfolk shift for the light land; and for the heavy soils, fallow, wheat, seeds, wheat, beans (or oats); or sometimes fallow, wheat, beans, wheat.

SURREY.—*Tenancies*, generally from Michaelmas (there are instances of Lady-day and Midsummer ones), are of three kinds:—1st. Parol, subject to paying in and out for the usual

and customary valuations, which are the most usual. 2nd. By agreement in writing, and many of them subject to determination at one or two years' notice, as happens to be mutually agreed on. 3rd. By lease—the general periods are seven, fourteen, or twenty-one years; in many instances, in such cases, subject to determination at one or two years' notice, or at the first or second periods of term granted.

*Rentals.*—Usually reckoned at yearly sums; but almost generally made payable at least half-yearly, and very frequently quarterly.

*Repairs.*—The custom on each estate very much varies, according to the tenure of the landlord's holding; but where the tenant is to repair, the landlord is to allow rough timber on stem, bricks, tiles, and lime at the kilns.

*Outgoing and Incoming Obligations.*—Incomer pays by valuation for the fallow, for turnips, for Michaelmas crops, half the labour upon the fallows during the succeeding year; manure for turnips or Michaelmas crops, half the value of that used for similar purposes the year before; for folding and half-folding the same way; for seeds, leys, and underwood, for hay and straw, and for all manure upon the premises.

The custom of the country extends to ploughing, harrowing, rolling, manure, and dressing; lime, and sheep folding: clover, grass, layers, rent and taxes of fallows, growth of underwood and hedges, hay, straw and haulm, turnips, roots and pulse, half fallows, and half dressings, after one year's crop.

*Husbandry Obligations.*—A portion of land yearly to be summer fallowed in the lighter and better parts, one-fifth in the heavy, one-fourth of the arable; where hay or straw are to be consumed on the premises, and the manure arising paid for, such articles are set at a feeding or consuming (not at a market) price. But the customs as to these matters are very local and fluctuating.

In addition to the proportion for fallow there is a customary restriction, not to take more than two corn or grain crops in succession.

*Rotation of Crops.*—Apart from the influence of contiguity to the metropolis, the general usage of tillage is in the lighter and better soils adapted to the culture of turnips, to be

fed off, and barley, a five-course system, viz., fallow, turnips, barley, clover, wheat, lent corn of some sort.

In the heavy and wetter lands, a four-course system, viz., fallow, wheat, clover, oats.

[I am indebted for this statement to Mr. Crawtor, of Cobham].

*Sussex.—Tenancies.*—The larger estates are generally occupied by tenants at will. On the estates of the smaller properties there are many instances of leases for periods from seven to fourteen years, and in some few cases for twenty-one years. These leases are often determinable by two years' notice from either party, and this arrangement has gained ground considerably within the last twenty years.

*Rentals.*—The amount of rent is generally fixed; but there are many instances of corn-rents. The periods for the payment of rent are the 25th of March and the 29th of September (g).

*Repairs.*—The farm house and farm buildings are usually kept up by the tenant (except in cases of fire or violent storm), the landlord supplying the materials within seven or ten miles.

*Outgoers and Incomers.*—In the absence of special covenants for outgoing and incoming obligation, the customs differ much in two different districts of the county.

Take the first district as bounded on the north by the Southdown Hills, on the east by the river Adur, the west by Hampshire, the south being the coast; the following approaches as nearly to the custom as may be:—

The dung produced from the last two crops of the outgoing tenant is left for the landlord, except a small proportion in some instances is claimed by the outgoing tenant for peas or beans of the last year; the only charge made on the landlord for the dung being the cost of carting, casting, mixing, and spreading.

The straw, chaff, and cavings are taken by the landlord for the cost of threshing and drawing the corn to market, or are paid for by him at a foddering-off price, which usually is a

(g) "Corn-rents, I [Mr. Boniface] think, will become general."



much less sum than the cost of threshing and drawing to market. The hay of the outgoing tenant is taken by the landlord at a foddering-off price, which is about two-thirds of the market price.

The seed and tillage are paid for, but no allowance is made for rent and taxes, or the fallow land.

There is no custom which gives to the outgoing tenant any consideration for beneficial interest he may have in the land by cultivation or improvements; but, for some years past, payments of this nature are provided for by special agreements.

In the east and north of the county, including the Weald, the customs are similar to those of Kent and Surrey. The dung produced from the last crop but one belongs to the outgoing tenant, and he is entitled to half-dressings of dung and lime, that is to say, for half the value of the dung and lime which has been put on land from which the outgoing tenant has had but one barn crop; and in the case of grass land one crop of hay, and has his corn of the last crop threshed and drawn to market, not exceeding ten miles, for the fodder of the straw, the chaff, and cavings. In some instances it is the custom for the outgoing tenant to thresh and draw to market his own corn of the last year, and to retain possession of the yards to fodder his stock till May-day. In this case he is paid for the dung when he gives up the barn and yards: he leaves his hay at a feeding-off price, is paid for seed and tillage, for rent and taxes on the fallow land, for old leys, for underwood and hedges to the stem, and to a certain extent for beneficial interest for extra cultivation; as for instance, in the case of a turnip, rape, or green crop, having been fed off on the land, he is allowed a certain proportion of the cost of preparing the crop, the seed, &c.

*Restrictions and Obligations as to Culture.*—The custom of the country would be the obligations on the tenant as to culture; but it is difficult to define the restrictions and obligations placed upon the tenant by custom, and I think that perhaps the improved practices of cultivation now generally followed, from the comparative novelty thereof, would not be the course of cropping binding on the tenant by the custom, although now made the basis for special agreements.

In the first district I have named, between the coast and the Downs, the present prevailing plans of cultivation are those known as the four and two lain on the coast and strong land, and the four-lain on the higher and lighter lands.

The principle of the former system, is that not more than one-half of the whole of the arable land should be sown with white crops in one year, nor less than one-sixth of the whole with turnips. The rotation is, turnips, barley or oats, seeds, wheat, pulse or green crops, wheat. The principle of the latter system, is that not more than one-half of the whole of the arable land should be sown with white crops in one year, nor less than one-fourth of the whole with turnips. The rotation is, turnips, barley or oats, seeds, wheat.

The rotation of cropping in the Weald of Sussex, is a four-lain course : thus—fallow, wheat, seeds (tares or beans), and oats ; or fallow, wheat, oats, and seeds (tares or beans). The former is the course most in practice among improved farmers. I much doubt however if either of the foregoing plans of cultivation is ancient enough in usage to have become the established custom of the country, and think that the *three-lain* system, which has but little principle in it, except that it prohibits more than two white crops in succession, would be the most readily acknowledged in law as the custom of the country ; because it formed the basis of the farming covenants of leases up to the commencement of the present century, and is still pursued in many farms and districts of the county where but little advancement has been made in improved cultivation, or where the land is naturally heavy and productive, or where manure can be plentifully and readily obtained, and in open common arable fields. It is quite clear that there is no acknowledged and positive custom that, in the absence of special agreement, will secure to the landlord that his farm will be left in reasonably fair cultivation ; and undoubtedly this wasteful state of things had its origin in the absence of covenants that would secure the outgoing tenant a fair payment for acts of husbandry, which would afford benefit to his successor.

In the present day, the farming covenants of leases and agreements, as to rotation of cropping, are formed with reference to the nature of the soil and local circumstances, and

covenants to secure to the tenant, on leaving, a fair valuation for unexhausted improvements are cheerfully adopted by landowners in a form suitable to modern and improved cultivation.

[For this excellent exposition of the customs of Sussex I am indebted to Mr. Boniface, of Arundel.]

WARWICKSHIRE.—(*Abridged from Kennedy and Grainger.*)

Lady-day tenancies ; half-yearly rentals. The tenant keeps buildings in repair.

*Outgoing and Incoming Customs.*—The outgoer takes an away-going wheat crop as follows. If fallowed for, he takes the crop by paying rent and taxes for the land it grows upon until Michaelmas ; but if a brush crop, it is then at the option of the incomer either to take it upon the ground, paying for the seed and labour and the past half-year's rent, or to allow the outgoer to take it on his making the same payments as he does for the fallowed wheat. In all written agreements, however, it is usual to provide compensation to the outgoer in money for the wheat sown.

The outgoer is paid for breaking up winter fallows, but is allowed nothing for the work upon a turnip fallow, even if the crop is fed off ; but if the crop fails, he then receives the amount of half a year's rent for the labour upon the fallowed land of that crop.

The incomer has the option either of ploughing the ground himself for the spring crop, or of paying his predecessor for doing it ; but he cannot enter upon the land to plough before Lady-day without permission.

The outgoer is bound to consume all hay and straw on the premises, and to leave the dung for the benefit of his successor.

Warwickshire consists generally of a mixture of clay and loam, but in some districts there is a fine light barley soil. The great inexpediency of the customs, militating as they do against the extension of green crops, has rendered agreements common where agriculture is cultivated.

The usual rotation on the loamy soil, is—1st, turnips ; 2nd, barley ; 3rd, seeds cut ; 4th, ditto fed ; 5th, beans ; 6th, wheat. Another is—1st, fallow ; 2nd, wheat ; 3rd and 4th, seeds cut and fed ; 5th, beans ; 6th, oats.

On the barley land the four-course system is adopted; but sometimes a crop of barley is taken after the wheat, sown in a bastard fallow from the wheat stubble.

**WESTMORELAND.**—In the northern part of this county, the customs are so nearly analogous to those of the sister county of Cumberland, that it would appear unnecessary to repeat them. The proportion of arable to pasture land is less in this county than in Cumberland, and the period of entry is more generally old Lady-day than Candlemas. The on-coming tenant, however, enters for husbandry purposes at Candlemas, the way-going tenant retaining the dwelling-house, a proportion of the farm-buildings, and such of the lands as are necessary to the maintenance of his stock until old Lady-day. Rents, as in Cumberland, are paid half-yearly; whilst instances are to be met with where the tenant undertakes the repair of all farm-buildings, the landlord finding the rough materials.

In the south of the county, a custom prevails for the off-going tenant to take two-thirds of the wheat crop raised on fallow, and one-half of a brush crop or of a barley crop raised on winter fallow. In the wilder districts, stipulations as to conditions of management are loose and vague, so loose that it is alleged to be a custom, that "where the tenant does not find muck, he need not leave muck."

Landlords now, generally in all parts of the county, stipulate that two white crops are not to be taken in succession; whilst they also very generally stipulate that meadow lands are to be manured periodically, usually once in three years. No general custom prevails on stock farms as to the removal of hay or straw from the premises. The customs of this county are as near as possible those of Cumberland, with the exceptions above referred to. [Revised by Mr. Blamire.]

**WILTSHIRE.**—*Rentals.*—The rent is reserved quarterly, but generally received half-yearly. The Lady-day rents are usually paid between September and November, and the Michaelmas between March and May. This practice of allowing half a year's rent in hand is recently, however, falling into disrepute. It is more convenient to the landlord to have his rent paid up close; and it is better for the tenant, inas-

much as it deters persons without capital from competing for farms.

*Repairs.*—Landlord pays for materials, except for straw, and glass and lead of windows; tenant providing carriage thereof, and paying for labour of repairs (*h*).

*Tenancies.*—Michaelmas entries. Incomer enters previously, to sow grass seeds with outgoer's last crop of Lent corn; has a previous entry, usually about Candlemas, to prepare and sow turnips; and at Midsummer, on the summer field, or second year's ley, to prepare for wheat.

There are some few Lady-day holdings, but these are almost entirely confined to the few parishes where there are still open or commonable fields not yet inclosed or "laid several."

*Outgoing and Incoming Customs.*—Outgoer clears off his sheep at Michaelmas, and holds over until Midsummer following the barns, a portion of the stabling, and the joint use of the yards, to enable him to feed out with cattle the straw and fodder: the muck arising therefrom is left for the benefit of the new tenant. Any unconsumed hay which may then be on the premises (of the last year's growth) he is paid for by valuation according to what it is worth to feed out with cattle thereon, leaving the manure thereof there.

The incomer has a right to all the dung made from the outgoer's last two crops, and consequently takes to and carries forth upon the land, on which he has a right of previous entry to prepare for his turnip and wheat crop, so much as he may

(*h*) Mr. Attwood, of Salisbury, whose practice as a land agent is, I believe, by far the most extensive in this county, remarks in the communication with which he has favoured me:—"My own practice, and that of my predecessors in this office for upwards of seventy years, has been to oblige the landowner to provide or pay for all materials, except straw for thatching, and glass and lead for windows; and to pay one moiety of the cost of workmanship and labour—the object being to ensure the use of proper materials of the best description; and, in regard to the workmanship (usually day work), to make the tenant interested in

keeping a watchful eye upon the labourer, so as to ensure a day's work for a day's pay. These conditions apply to the farm-house as well as to the outbuildings. As to gates and gate-posts, the landlord craves the option of finding rough timber, or of paying half the cost price of each new gate and post in lieu of the timber required; the repairs of said gates, and of all fences, the tenant pays for wholly, being allowed rough timber for the same.

In other leases, I have frequently found that the landlord is bound to provide materials, and tenant labour."

find in the yards, which should not be less than what may have been made from the previous year's crops of corn, grain, and hay (i).

In the few Lady-day holdings the outgoer is entitled to an away-going crop, sometimes of wheat only, sometimes of wheat and Lent corn.

By the custom, hay or straw may not be removed. Not more than two white straw crops may be taken in succession, one only of which is allowed to be wheat.

*Rotation of Cropping (k).*—When leases are granted, it is

(i) I know of no other customs as to outgoers, except that the outgoing tenant allows his successor to enter and sow grass seeds with his last Lenten crop, which he harrows in gratis; and from the time of the pre-entry he usually provides house-room for the men, and stable-room for the horses, as well as straw wherewith to litter them, during the time they are employed about the previous acts of husbandry on the farm; in most cases certain rooms in the farmhouse are reserved for the accommodation of the new tenant.

The outgoing tenant allows the incomer to have, and use, all the manure which may then be in the yard, (which should not be less than what may have been made from the produce of the previous year's crop,) the incomer being always entitled to the manure to arise and be made from the outgoer's two last crops of corn, grain, and hay. The outgoer's privileges are to hold over a part of the farm-house, generally one-half, and the use of the barns, with a specified proportion of stable-room, and the joint use of the yards, until Midsummer after the end of the year of holding (Michaelmas), to enable him to thresh out and market his corn, and to consume with cattle on the premises the straw and fodder arising therefrom—the manure whereof remains for the benefit of the on-coming tenant.

The incoming tenant is required to take unconsumed hay of the outgoer's last crop at a consuming price—usually about two-thirds of the market value. I know of no other obligation on his part, except to allow outgoer to hold over as above mentioned. Where no reservation is made for a pre-entry to prepare for turnips by mutual agreement, it often happens that the outgoing tenant ploughs, manures, prepares, and sows the wheat stubble, or a portion of it, for turnips—in which case he is paid by the incoming tenant for seed and labour. No custom prevails as to this or any other act of husbandry, giving the outgoing tenant claims on the incoming tenant; nor do we know of any "allowance in respect of buildings and improvements," which can be enforced *nolens volens*.

(k) Mr. Attwood says:—"In the rich clay soils of the Pewsey Vale, it is permitted the tenant to cultivate his lands in three fields; on the better lands of the chalk districts, the four-field rotation is prescribed; and on the thin lands near the Downs, and the 'Beak' or Down arable land, the tenants are restricted to a five-field, in some cases to a six-field course. No specific mode is laid down for manuring the lands—it being deemed sufficient to compel the tenant to keep a full stock of sheep; to do which he is necessitated to grow

usual to insert covenants directing the course of cultivation according to a three, four, or five field system, as the soil of the particular farm may dictate. The rotation on the turnip land is wheat, turnips, barley, clover. Some farmers put half the wheat-stubble to barley and half to turnips; the barley moiety being seeded and allowed to remain two years, to be then broken up for wheat; and the turnip crop followed by barley, seeded and broken for wheat after one cut of hay. In the next four years' round the cropping is changed; and where there were turnips the crop is barley; and where barley, turnips. This is called the alternate system, and is much adopted in Dorsetshire. In the rich clay lands of the valleys a common rotation is, beans, wheat, and clover; or wheat, barley, and clover.

[I am indebted to Mr. Francis Attwood, of Salisbury, for revising and annotating my statement of the customs of Wiltshire.]

WORCESTERSHIRE.—1st. *Tenancies, and Outgoing and Incoming Obligations*.—Yearly tenancies are almost universal, and commence at different periods; no fixed time can be laid down. *Lady-day, Candlemas, Michaelmas*, and in some cases *Christmas*. In the case of Lady-day and Candlemas tenancies, which perhaps most prevail (on strong land), it is usual for the oncoming tenant to have possession of all the tillage land—*excepting one-third*, which the offgoing tenant is entitled to sow with wheat (and which he usually takes at his option upon the land in the best condition for growing a crop); also all the pasture excepting one field usually adjoining the house, which he holds until the 1st of May following—for the use of his cattle, which have also one yard and shed until that time,

saintfoin, clover, and rye grass, roots, &c. &c. for their maintenance; and doing this, he cannot fail to have his lands in good heart and condition.

“The hedges and pollards are usually cut at not less than eight, or more than ten years' growth: and the withys and furze at not less than four, or more than six; and provision is made, that not more than an average quantity shall

be cut yearly.

“The Rotation of Cropping varies with the nature of the soil. In the deep lands of the Pewsey Vale, beans, wheat, and clover, or wheat, barley, and clover, is the rotation. In the lands above the Vale, wheat, turnips, barley, and grass; and on the poorer lands on the Hill, the grass field lies a second year, as a summer field, in preparation for wheat.”

for consuming the unspent hay and straw; also the use of two rooms in the house for a labourer or servant, to occupy from the time of giving up possession until the 1st of May in the following year, and the use of granary: the object of this being that he may remain to have the care of the wheat planted by the outgoing tenant, and to hoe, harvest, and thresh it, the straw arising from which is the property of the oncoming tenant. By the custom there is no stipulation as to the time of threshing the outgoer's crop, so that the oncoming tenant may have straw at suitable times during the winter for the use of his cattle.

In the case of leases and agreements, it is usual for the landlord to covenant to pay the outgoing tenant for any clover or grass seeds sown in the year of quitting, or to allow the incoming tenant to sow clover seeds on the land, growing his off-going crop of wheat and harrowing the same, which ought always to be compensating on the part of the outgoing tenant.

With respect to the light land, one-fourth only of the wheat ought to be the property of the outgoing tenant; but the custom being that a tenant quits as he entered, and the four-course system being a new one, of not more than thirty years' standing, no alteration has taken place, and the custom has been usually to allow the outgoing tenant to take his one-third as in the case of strong land.

*2nd. Rentals.*—The rentals are all money rentals: within the last few months the subject of corn rents has been much discussed, and I believe there are some farms now let, or about to be let, at corn rents; but I am not aware what scale of average has been taken, and there are many difficulties in arriving at a just scale, particularly on an estate of mixed pasture and arable land.

Rents are payable half-yearly, and on many of the large old estates, belonging to noblemen and resident country gentlemen, it has been usual to allow the tenants long credit, or what they call half a year's rent in hand; that is, to a Lady-day entry, the first half-year's rent due at Michaelmas to be paid at the next spring audit, usually about April or May: but this long credit I fear has not been any advantage to the tenant, who sells everything for ready money.



*3rd. Repairs.*—There is no general rule here ; some are done by the landlord altogether, excepting the inside of the house and glass windows : but on some estates let at a very low rental, and by no means unusual, the tenants have done all the repairs, and the landlord found all timber in the rough, bricks, tiles, and lime, &c. ; in other cases the tenant has paid one-third, and the landlord the remainder.

*4th. Culture.*—The only restrictions which have been usual as to culture, in yearly tenancies, have been the not allowing two white straw crops to be taken in succession, and not allowing the selling off of hay or straw manure ; but in some cases, under agreements and leases, no upland pasture-land is allowed to be mown, and only a portion (frequently half) of the clover seeds, but there is no fixed rule here.

*5th. Rotation of Crops*—This depends of course upon the character of the soil ; on strong wet lands, which comprise the larger portion of the county, a three-course system has been followed—wheat, beans, and fallow ; but a better system is now coming into operation, and seeds and vetches are being constantly taken, and the quantity and quality of the corn grown has been very greatly improved by this alteration of system. Turnips are frequently grown upon the strong lands, but I think in almost all cases much to the injury of the following crops.

On stony lands, the best course that I have seen pursued by tenant farmers has been one half of the tillage for wheat, and barley in the proportion of two-thirds of wheat to one-third of barley, the land for barley having been made a summer fallow ; or, after vetches, the remaining half of the tillage to be two-thirds of clover and fallow, and one-third of beans and vetches. Thus, say 60 acres of tillage :—

20	acres of wheat ;
10	„ barley ;
12	„ seed—6 acres of white clover grazed, and 6 acres of red mown ;
8	„ dead fallow ;
10	„ beans and vetches.
—	
60	
—	

But for many years, and until the last say ten or twelve years, the culture of stony lands has been the one first mentioned; viz., wheat, beans, and fallow, omitting the most useful of all crops on that description of land, the seeds and vetches. On the light soils the custom that exists, and which cannot be much altered, is, 1st, fallow for turnips; 2nd, barley; 3rd, seeds; 4th, wheat; and sometimes by many of the best farmers a crop of beans or peas have been taken, but only when the land has been in high cultivation; the custom of taking wheat instead of barley is becoming very common, but the seeds have rarely been so good after wheat as after barley.

*6th. Grass Lands.*—The custom has been to mow about one-third of the pasture or meadow, it being understood that a part of the seeds on the tillage are also mown.

[For this statement, of the customs of Worcestershire, I am entirely indebted to Mr. Lakin, of Newland, Worcester.]

**YORKSHIRE, NORTH RIDING.**—*Tenancies.*—Lady-day tenancies, with right of pre-entry to plough at Candlemas. In some parts, and especially in the Vale of Cleveland, the house and meadow lands are not given up till Old May-day.

*Rentals.*—Half-yearly. In some instances landlord repairs buildings, and in others only furnishes materials. There are some estates on which the tenants have done the whole at their own expense.

*Outgoers and Incomers.*—Outgoer takes an offgoing crop to the extent of one-third of the arable, deducting one year's rent for the crop land as standage, and leaving the straw to be consumed by the successor—or in some districts retaining accommodation to consume it on the premises; but the tenants are now very much under conditions, which give the incoming tenant the purchasing of the away-going crop at a valuation. When a four-course shift is the customary culture, the outgoer is restricted to one-fourth of the arable for his outgoing crop. Outgoer receives for seed and labour of young clover and grass seeds sown in the preceding spring, and in general also for the manure by valuation made from the last year's crops.

In most cases the rotation of crops is the four-course or seed system; but after paring and burning, rape or turnips

and the three-course system for a turn or two, which is then followed by the four.

About Thirsk, the rotation observed on poor land, is turnips (after paring and burning), oats, maslin, turnips; on rich land (after paring and burning), oats, maslin, turnips.

[I am indebted for my information, as to the customs of this Riding, to the courtesy of Mr. Daniel Scate, of York; Mr. Humphries, of Ripon; the Messrs. Bradley, of Richmond; and Mr. Milburn, of Sowerby.]

**YORKSHIRE, EAST RIDING.**—*Tenancies* commence on the 6th April, and notice to quit from either landlord or tenant must be delivered prior to the 11th of October.

*Outgoers and Incomers.*—The outgoer is entitled to the value of the crops which have been sown after a summer or green fallow in the regular course of cropping, to the value of the clover or grass seeds that have been sown the preceding spring, and to the value of the manure which may have been made from the crops after notice has been given by either party to quit. The valuations of the growing crops are usually made in the month of August when they are nearly ready to cut, by arbitrators, or the umpire selected by them. The incoming tenant may enter to plough stubble intended for fallow at Candlemas, and on some estates plough out clover or grass seeds which have been sown or pastured the preceding year and come in rotation for a spring crop.

Green crops, corn, clover (or grass seeds), corn, are the prevailing four-course crops on the Wolds and turnip districts. On the heavy lands, summer fallow, wheat, clover, oats, beans, appear to be the most general cultivation (*l*).

(*l*) I am indebted for this account of the customs of the East Riding to Mr. Charles Howard, whose experience in this county as an Assistant Tithe Commissioner, and whose reputation as an agriculturist, afford abundant security for its correctness—so far as correctness can be predicated of a statement upon a subject wherein general rules are intersected by continual exceptions. I subjoin, however, an extract from the evi-

dence given by Mr. Page, of Beverley, before Mr. Pusey's Committee (Evidence, p. 143), as that gentleman speaks in detail of the way-going custom in his own neighbourhood.

"The offgoing tenant is entitled to a way-going crop, varying from one-third to one-fourth of the arable, according to the description of land he farms. The way-going crop in the Wold farms averages one-fourth part of the arable;

YORKSHIRE, WEST RIDING.—(*Contributed by Mr. Paul Bright, of Sheffield.*)

*Tenancies.*—New Candlemas-day, February 2nd, is the general time of entry to the land, and May 1st to the buildings.

But the desirableness of entry, to both land and premises, on the 25th of March is gaining ground and the custom in this respect is undergoing a change.

*Tillages and Incomers.*—*Tillages.*—"Full and half tillages," as it is called, is the great Yorkshire custom, and is in some degree extending to other parts. Here the word *tillage* is confounded with *manure*: the former is strictly the working, dressing, or cleaning of the land, and for which, if no crop has been taken, the full allowance is given to the offgoing tenant; if a crop has been taken, then about half that allowance is given. In manure, the full value is allowed where no crop has been taken; and where a crop *has* been taken, then half. But on some estates the manure made from the farm belongs to the landlord, and here the allowance is only for labour. Upon some estates the offgoing tenant has been allowed only for labour on the manure, and the incoming tenant has been charged with the full value. On others the contrary practice has obtained; the owner has made the manure his own, and

therefore, if a tenant had 400 acres of arable land, he would have a right to a way-going crop from 100 acres. Upon the stronger soils, Holderness for instance, and the west side of the Wolds which is called Howdenshire, the way-going crop averages one-third part of the arable land. \* \* \* He leaves the crop at a valuation to be taken by the on-coming tenant, who has to pay the amount of this valuation, deducting the average rent per acre of the farm upon which the way-going crop has grown, which is called the onstand; also deducting the expenses for inning and outing, which is reaping, leading, threshing, delivering, stacking, and every other expense attending the bringing of the corn to market; also deducting one year's parochial

taxes for that part of the land upon which the way-going crop has grown. The oncoming tenant gets the straw and the eatage thereof, but he has to allow the offgoing tenant six shillings or seven shillings per acre, or something of that sort, for the eatage of the straw. In three parts out of four (estates) the dung belongs to the land, but this is various. There is no compensation for the purchase of artificial manure, or artificial food for stock, nor for draining or chalking the land. It is not generally the practice to employ those means of increasing the productiveness of the soil. There has been a certain portion drained, and there has been a certain portion that has been chalked or marled, but not to any very great extent."

charged the entering tenant only with the labour. In every case, *purchased* bones and manure, as well as lime, are paid for according to their first cost, subject to the usual deductions for the crops taken.

*Wheat*.—In the extreme southern part of the West Riding the crops of wheat are not valued; but, in the case of wheat sown on clover ley stubble, an allowance of 50*s.* to 60*s.* per acre is made for the presumed extra state of the land, in addition to the ploughing and harrowing, seed wheat and sowing. Where it is the custom to value the wheat crops on clover leys, and after peas and bean stubble, if the parties cannot agree, the offgoing tenant reaps the crop, deducting from the tenant one year's rent and rates, usually called standage. In those cases where the wheat crop after fallow is valued as a crop, then, after the standage is deducted, a charge is made on the incoming tenant for the unexpended manure and tillages, charging for the cost of and labour on the clover, and in hay-seeds, as the case may be.

*Rotation of Crops*.—Turnips (or fallow), barley, seeds, wheat.

There is a growing tendency to evade the strictness of this course, and to take two white crops after the clover seeds. On the stronger lands, where summer fallows are still deemed to be necessary, it is justified on the plea that the outlay on the fallow, and total absence of profit for one year out of five, fully warrants this second crop; in some cases it is allowed, on having a green crop between the two white ones.

#### NORTH WALES (*m*).

*Commencement of Tenancies* varies. Lady-day tenancies are the most common. There are partial local customs giving a

(*m*) The customs of North Wales do not appear to be sufficiently distinct or important to justify an epitome of them county by county. High rents, poor farmers, and wretched farming appear to form the rule. To interfere with the habits of this frugal and long suffering class, and to attempt to make enterprising farmers of them would be vain, unless you change

the whole system. You must give them larger farms and lower rents; new capital, new comforts, and new wants. I have, however, been favoured with returns from many parts of the locality, which are too valuable, as containing the experience of practical men, to be altogether omitted, and I subjoin a selection from them.

right of pre-entry to plough, usually on the 2nd of February. In the lowlands, and in some upland districts, Old Michaelmas-day tenancies and All Saints (12th November) tenancies are found to prevail.

*Rentals.*—Half-yearly payments. The first half of a Lady-day tenancy on the Christmas following, and the other half at Midsummer. But this, although usual, is not an obligatory custom.

*Repairs.*—The landlord does all substantial repairs, the tenant leading the materials.

*Outgoers and Incomers.*—In the Lady-day tenancies the outgoer takes his way-going crop; but the proportion varies in different districts. He is also allowed the cost of his clover and grass seeds, if not depastured after the 1st of November. With respect to manure, the only general rule that can be stated is, that the tenant quits as he took. In the mountain districts, a custom occasionally prevails that the incomer shall take the flock at a valuation.

*Culture Obligations and Restrictions.*—The custom of the country in North Wales imposes no obligations and no restrictions. The farmers on the smaller properties are said to farm at very high rents and with very little capital. In some cases, such as that of Sir Richard Williams Bulkeley's estate in Anglesey, proper agreements are made, and their provisions enforced. But these are the exceptions. The rule is, that in the absence of some special agreement the tenant may do what he pleases with the land. The common practice is, to crop the land with oats until it will grow them no longer.

DENBIGHSHIRE, FLINTSHIRE, AND ANGLESEY.—(*Communicated by Mr. Yates, of Whittington.*)

*Tenancies.*—The usual time for quitting farms is at Lady-day, the tenant retaining the farm house, part of the farm buildings, and a boosey pasture till 1st of May, to enable him to consume the hay and straw on the premises, and the manure is left for the incoming tenant, who is generally allowed to fallow the wheat stubbles for barley or turnips; but, in case the tenant refuses to allow this privilege, the incoming tenant must defer the work until Lady-day.

*Rentals.*—The rents are due at Michaelmas and Lady-day, and are generally paid in money within two months after these periods—namely, about Christmas and Midsummer.

No rents are received for farms (however small) quarterly; the quarterly rents are customary for small houses in the provincial towns.

*Restrictions.*—Ploughing up old pasture lands would be considered as taking an unfair advantage; and a tenant who took such a liberty would be looked upon as a mean, shabby fellow, by his neighbours. [Mr. Yates does not appear to think that the landlord would have any remedy.]

*Manure.*—The farm-yard manure is left on the premises for the incoming tenant (except in a few instances, where the former tenants have been *improperly allowed* to carry the manure off the premises); and when this has been done, the incoming tenant, or his landlord, purchases the manure from the outgoing tenant, that the farm may not be injured by such bad management.

*Obligations.*—The offgoing tenant is required to spread a fair quantity of lime or compost on the clover root, or pasture land, which he may plough up for wheat in the autumn; and in default of this, he would not be considered fairly entitled to his share of the crop, which would be one-half, and from a fallow, two-thirds. The offgoing tenant is expected to put in proper repair the house windows, and temporary repairs of buildings, with hedges, ditches, gates, and stiles (the landlord finding timber in the rough); but the tenant is not expected to find any new gates, or to cut or plash any hedge, but only to make up the gaps—which is frequently done in an imperfect manner.

*Rotation of Crops.*—Wheat, turnips, barley, clover, and pasture. The wheat land being previously prepared with lime and compost, this is called good husbandry; but some greedy farmers only allow the clover to lie part of one year, and plough up the young clover in the autumn; but this custom bespeaks poverty, on the tenant making too common a practice of such management.

*On Tenacious Clay Lands.*—These lands, when in pasture, are ploughed up for oats in the spring; and, after oats, then wheat: the land, being then in a foul state, should be fallowed, and then sown with wheat and laid down with another crop of oats—not being suitable for either barley or beans.

Many tenants take too many white or corn crops in succession, thereby first impoverishing the land, and lastly becoming poor themselves: this is too often done on tenacious clay lands, where a much greater extent is kept in tillage than ought to be; which management tends to make the farm gradually poorer year by year, till at last the tenant fails to pay his rent—because, by increasing his tillage, he gradually decreases his stock of cattle, and thereby fails to produce the required quantity of farm-yard manure. I have frequently seen in Wales the very essence of the farm yard escaping, without any attempt on the part of the tenant to prevent it; yet this very tenant sends his waggon, probably a considerable distance, to fetch lime, and allows the overflowing of his yard manure to escape his notice.

*ANGLESEY.—Tenancies.*—The rents for the most part are paid annually, namely, in December—which is a disadvantage to the tenant, especially to

those tenants whose capital is limited. I therefore (some twenty years ago, when valuing a great portion of Sir R. B. Williams Bulkeley's estates) recommended the Shropshire custom, that of paying *half-yearly*, which was at once adopted, and has succeeded. The usual time of quitting farms is on the 2nd of November, and of course the offgoing tenant must dispose of his hay and straw, with most of his grain, to the incoming tenant at a valuation—and be subjected to the like inconvenience of buying the hay, straw, &c., on the farm to which he is about to remove—since he would not be allowed to carry off the hay or straw.

The great improvements in agriculture, and improved farm buildings, made by Sir R. B. Williams Bulkeley, Bart., on his estates in Anglesey and Carnarvonshire, these last twenty years, and the example which he has set his tenants in the improvement and drainage of poor tenacious clay lands, is above all praise. The tillage lands in Anglesey are for the most part a tenacious clay, thinly covered with soil; the farms are small, and the capital very much divided.

*Leases.*—The usual terms for leases of farms are for fourteen or twenty-one years; and the restrictions, as to ploughing or having in tillage, should not allow more than one-third or two-fifths to be in tillage in any one year, and not to plough up the young clover for wheat; and the fine for excess should be moderate, say 5*l.* an acre; to consume the produce on the farm (except *wheat* straw, which, if sold, an adequate quantity of *town* manure to be purchased by the tenant for the wheat straw sold, and a bill and receipt produced of the actual quantity bought); to keep and leave in good repair the house and farm buildings, and the gates, stiles, hedges, and ditches, the same being first put in good repair by and at the expense of the landlord; and to leave on the premises all manner of manure, and to spread annually on the land the manure made in each year.

**FLINTSHIRE, DENBIGHSHIRE, AND MERIONETHSHIRE.**—(*Communicated by Mr. E. Williams, of Mold.*)

*Tenancies.*—The times of entry upon farms vary very much in North Wales, and indeed in our own county (Flint); in the parishes of Hawarden and Hope, in this county, they enter upon all the lands (except an outlet) on the 2nd day of February, and on the outlet and buildings on the 1st day of May. (The entry on the outlet and buildings on the 1st of May is, I believe, general through North Wales.) In all other parishes in this county, they enter upon the land on the 30th of November; but in some places the landlord reserves a right (by special agreement) to enter upon the stubbles immediately after the harvest. This is also the time of entry in the upper or west end of Denbighshire. In other parts of Denbighshire and Merionethshire they enter upon the land on the 25th of March.

*Rentals.*—Payable half-yearly, in money. Where the entry is on the 30th of November, the first half-year's rent is due on the 25th of March, and is a forehand payment. In all other cases the half-year's rent is due



at the end of half a year from the time of entry; at least, it is so, wherever I am concerned.

*Repairs*—both of houses and outbuildings done by landlord, unless there is a lease; then, of course, it depends upon the agreement. One curious custom, though, prevails in this part of Wales: that is, that if the buildings are *slated*, the *landlord* repairs them; if *thatched*, the *tenant*.

*Outgoers and Incomers*.—The outgoing tenant has a right of sowing the usual quantity of wheat, and is entitled—if a summer fallow, to two-thirds of the crop—if not, to one-half. His taking away the straw depends entirely upon the agreement between him and his landlord. The usual custom is for the incomer to pay for seeds and tillage, if any. I should not like to give an opinion as to the manure. The usual custom has been to leave it upon the premises; but there have been instances, where it has been either carried away, or the incomer been obliged to pay the outgoer for it. I am not aware of any tenant having ever made any building unless he had a lease. Draining, and other permanent improvements, are, I believe, generally allowed for; perhaps in some instances they may not be, but I am perfectly satisfied they ought to be; as it is very unfair for a tenant holding his farm from year to year, after having spent his capital in draining or other permanent improvements, to be turned off at a moment's notice.

*Restrictions*.—There seems to be great doubt as to the right of the tenant to plough old grass land; but the general custom is, when there is any land of that description, to make a special clause, naming the particular fields or field, and prohibiting the ploughing of it under a heavy penalty. White crops are often taken in succession, but it is not done by good farmers. Manure is sometimes sold off the farm; but very rarely. It is generally considered that the tenant has no right to do it, but I do not know that there is any law to prevent it.

*Obligations*.—When there are agreements, the tenants are bound to manure for a wheat crop and a green crop, and upon the greensward if the land is mown for hay.

*Rotation*.—The usual rotation of crops in this county is the following: Greensward ploughed up for wheat; then oats; then a green crop; then barley and grass seeds, although some object to having two white crops in succession.

**MONTGOMERY.**—(*Communicated by Mr. Mickleburgh, of Montgomery.*)

The Tenancies in this county and the adjoining ones, in North Wales, for farms, invariably commence at Lady-day; but the tenants do not move with their families into the houses until May-day, and generally it is *Old May-day*. The tenancies are almost all yearly ones.

The usual custom is, that the outgoing tenant has a boosey pasture assigned to him, where he keeps his stock between Lady-day and May-day. The size varies according to the farm and the stock kept on it.

Most of the larger landowners have agreements and conditions with their tenantry, and by these the meadow-land is drawn or kept up from

Candlemas-day (2nd of February), and the incoming tenant is allowed to enter and plough the corn stubbles in November, and do any other usual act of husbandry.

The rents are payable half-yearly, and the general time is to receive the Michaelmas rents at Christmas, and the Lady-day rents about Midsummer. Some of the large landed proprietors give their tenants six months' credit, but this is not general. Again, some very needy ones get them paid as soon as due. The rents are all money payments.

I have lately made an alteration in the conditions on some estates which I manage, in consequence of some dishonest tenants selling off their stock at Michaelmas, and running away. This I now meet by a clause, that, after notice has passed from either party, the last half-year's rents shall become forehand payments, if demanded.

The repairs are almost invariably done at the cost of the landowner, but the tenant generally performs the necessary carriage.

The outgoing tenants are entitled to a share of the winter-sown wheat, varying according to circumstances—whether sown on a summer's fallow or ley; and then again the shares vary, if the latter is grazed or mown. The custom of parishes likewise varies: one being for the outgoing tenant to take three-fourths off a fallow; others two-thirds, and half off a ley.

The offgoing tenants have the power or privilege of weeding, cutting, and stacking their share, on the premises, of winter corn of their own seedings, and the use of the threshing-floor of the farm, leaving the straw on the premises.

As frequent confusion and disagreement arise between the outgoing and incoming tenants, as to the time for threshing the outgoing shares, I have a fixed time named in the conditions of letting; and it is found convenient to name the last weeks in October, November, and December, for this purpose.

The outgoing tenant is usually allowed the cost price of all clover and grass seeds sown in the spring previously to quitting, on producing proper and authentic vouchers; provided the tenant fences-up or keeps such clover or seeds, on and from the 1st day of November, before the determination of the demise.

The manure is generally left on the farm for the use of the incoming tenant, although there are exceptions where it is paid for at a valuation by the incoming tenant. The custom is, as they enter so they leave in this respect.

Most of the draining has been done by some allowance being made by the landowner—that is, by their paying for the cutting and filling the drains with stone; the tenant paying for the rising and performing all the necessary carriage for the same.

Considerable portions, in this part of the principality, are now being drained at the entire cost of the landowner, who charges the tenant a percentage for the outlay—I believe about 5*l.* or 6*l.* per cent.

Tenants are generally restricted from breaking or ploughing up any

ancient meadow or pasture land, and from selling straw, hay, or manure off the premises.

The soils of North Wales are so exceedingly variable, and the changes from one description to the other so gradual, that it is difficult to lay down a general rule of culture, and it is left mostly to the tenant's judgment in his cropping. The check to over-ploughing is by compelling the tenant to carry a certain quantity of lime to the winter-sown corn, in the nature of a penalty for such excess of arable.

There is a custom belonging to and peculiar to farms, in the higher parts of the principality, where large flocks of sheep are kept. That is, the flocks having been settled upon the walks at a great trouble, and labour originally, it is usual for the incoming tenant to take to the whole flock, be the number what they may, at a valuation, which is generally made by two persons, one named by the outgoing and the other by the incoming tenant—the valuers choosing an umpire in case of disagreeing.

The valuers mostly take a liberal view of the flocks, on account of their being located on their several walks; and the price paid is generally something more than what they would fetch in a fair or market.

**CARNAEVONSHIRE.**—(*Communicated by Mr. Edward Edwards, of Brow Brck.*)

**Tenancies** (District of Llefyn).—Michaelmas, Old and New (Old predominates). No right of pre-entry to plough.

**Rentals.**—Payable half-yearly—Midsummer and Christmas—all paid in money. No corn-rents in the county.

**Tenancies** (District of Eifionydd).—Lands, 25th of March—the outgoer retaining one field as a turn-out for his cattle. Buildings, 13th of May.

**Rentals.**—Rents payable at Christmas, consequently half a year beforehand.

**Repairs.**—New buildings generally done by landlords, and ordinary repairs by tenants; but, on some estates, the landlords only furnish the materials, viz., timber, stone, lime, slates, &c., and the tenants pay for the work.

**Outgoers.**—No outgoing crops—the main tillage being barley and oats; incomer paying for clover and hay-seed sown previous spring, also for what manure there may be. No allowance for draining, building, or permanent improvements.

**Restrictions.**—No restrictions as to ploughing, cropping, or selling manure, excepting where agreements are made—*generally none.*

**Obligations.**—No obligations, except as above.

**Rotations.**—There is here no general system of rotations of crops, every one doing just what he thinks best for his interest: but a few have only two white crops, then turnips and potatoes; next barley, with clover and grass seeds; remaining in hay and pasture for three years, before the next breaking up; but oftener a great deal we have three running corn crops, the last seeded with grass seeds, and sometimes not seeded at all, but left to recover itself as it can. There are but very few who manage their land on the four-course system.

On the coast, from Bangor to Conway, they are now adopting the four and five course system; Sir Richard Bulkeley and Colonel Pennant compelling them by agreements. Wheat is extensively grown in that district.

Mr. Piercy, of Chirk, in a communication upon the customs of his neighbourhood, remarks:—"With regard to the query in your last letter, as to what the custom of the country alone would compel the tenant to do beyond paying rent in the absence of a written agreement, I can no otherwise answer than as yourself have done. Unfortunately the tenant is left at liberty to do as he likes; although had farming has before now occupied the attention of law courts, and the landlord in some instances succeeded in making out a case, on the ground of his tenant having abused his property, by some act of his exceeding all limit.

"The tenant, when any disagreement occurs, proceeds to carry off all before him; if his landlord is not fenced by a special agreement to the contrary. Hay, straw, and manure, all go.

"Your observation respecting cropping land is also correct—with oats, till it will grow them no longer.

"An instance of the kind came under my own observation some years ago, on a farm near Mold, in Flintshire, where the tenant had pared and burnt, and from which he took seven consecutive crops of oats, giving it no other manure during that entire period than its own ashes, and some small quantity of lime in addition; the result was, as is always the case I believe, the piece was overrun with foxgloves—a sure result of such treatment.

"The best land of North Wales I believe to be in the counties of Flint and Denbigh, and averages in the best parts 30s. an acre; some entire farms, of large extent, will average that. I do not mean to say that the entirety of those counties average that; from 15s. to 18s. would be about a middle average. Rents, I think, are higher in Flint than Denbigh—owing, perhaps, in some degree, to the former partaking more of a mineral and manufacturing character than the latter, and affording team work to the smaller farmers, who are pence wise and pounds foolish in neglecting their land, and, by planting their horses upon the roads, and carrying their hay and other produce to feed them on the roads, losing the manure. Lands being so unequally let in Wales makes it a perplexing matter to speak to tenants. Under opulent landlords, tenants are much better off than under the middle class of landlords. Under small proprietors many pay 40s. an acre. I do not mean accommodation ground in the vicinity of villages and towns, but that high rent is obtained remote from towns."

## SOUTH WALES.

CARMARTHENSHIRE, CARDIGANSHIRE, PEMBROKESHIRE, and the NORTH AND NORTH-WEST OF GLAMORGANSHIRE.

*Tenancies.*—From Michaelmas to Michaelmas generally. There is no *right* of pre-entry, generally, to plough; but, as the outgoing tenant at Michaelmas is seldom able to carry off all his crop, particularly potatoes, the outgoing and incoming tenant accommodate each other.

*Rentals.*—Half-yearly, payable on the 25th of March and 29th of September; but received generally in November, December, or January, as regards the Michaelmas rent; in May, June, or July, as regards the Lady-day rent. Some portion (a small one) of the rent, in many instances, is still paid in fowls, oats, coal, or eggs—sometimes in each; but by far the larger part of the rent is paid in money.

*Repairs.*—The repairs, if to any extent, are paid for by the landlords, except thatching, which is performed by the tenant, the landlord providing wood. The carriage of materials in each case falls generally on the tenant, the landlord paying the turnpike tolls and money out of pocket.

*Outgoers and Incomers.*—The general system of farming, and the period at which the tenancies generally terminate, render any provision for an outgoing crop unnecessary; still, where seeds have been sown by the outgoing tenant, he is generally allowed for them: but the notice to quit is given in March, the seeds sown in the spring; so that it is in the power of the tenant to make an arrangement with the landlord respecting the payment for seeds sown, or, if no arrangement be entered into, to sow none; but frequently the outgoing tenant allows the incoming tenant to sow seeds with the corn he sows; or, if the farm be not let, allows the landlord to do so.

The manure, provided the outgoing tenant found manure on the farm when he entered, belongs to the landlord; but, where leases exist, there is generally a provision that the outgoing tenant shall not remove the manure, but he may expend it on the land as he thinks proper. This, if annoyed, he will do to

the least possible advantage, and there should be a provision to prevent it.

No allowance exists for any permanent improvement; in fact, such is rarely done at all by the tenant. When any takes place the tenant provides the carriage usually, and all other expense is defrayed by the landlord.

*Restrictions.*—The tenants are not allowed to plough up permanent pasture or meadow.

At present, the restriction as to cropping extends only to prevent the tenant from taking more than three white crops in succession; and even this in the majority of instances is disregarded, as four, five, and a greater number of white crops are frequently taken in succession, to the injury of the tenant and the land. The tenants are not generally allowed to sell hay or straw, but they frequently do so.

*Obligations.*—They are few: to keep the fences in repair, and, where a lease, often the houses, the landlord finding wood in the rough; to sow seeds with the third white crop; to carry about eighty or a hundred bushels of lime to the acre with the first white crop.

*Rotation of Crops.*—Except the restriction as to taking more than three white crops and sowing seeds with the last, there is seldom any mode of culture pointed out. The prevalent usage may be inferred from what has been before stated.

From this epitome it will be seen that agriculture as a science is yet unknown in this country; still there are some few exceptions which would not discredit the highest cultivated lands of Great Britain: but the above observations apply to the general usage.

#### GLAMORGANSHIRE, SOUTH AND SOUTH-EAST.

*Tenancies.*—The tenancies terminate on Candlemas-day (2nd February) and Lady-day (25th March). The Candlemas takings predominate.

The incoming tenant has no right of pre-entry to plough.

*Rentals.*—The rents are made payable half-yearly, in money: on the 2nd of August and on the 2nd of February, for the Candlemas takings; and on the 29th of September and the 25th of March, for the Lady-day takings.

*Repairs.*—The repairs of all the buildings are made by the landlord ; but, if the roofs are *thatched*, the tenant provides reeds, and the landlord pays for the spars and for thatcher's hire. Timber in the weigh is found by the landlord for repairing the gates and styles. Haulage of all materials for the repairs to be done by the tenant at his own expense, the costs (if any) for passing through toll-bars, to be allowed.

*Outgoers and Incomers.*—In cases where the land has undergone a regular summer fallowing preparatory to sowing wheat, the rent and taxes with the tithes for the year, the cost of liming, tillages, seed, and all other equitable attendant expenses in preparing and sowing the wheat, are settled by two indifferent persons, who may be named by the individual tenants as referees, whose concurring estimate is to determine the sum to be paid to the outgoer ; and, in the event of the referees differing, they have the power of appointing an umpire, whose adjudication is final.

In cases where seeds have been sowed with the spring crops, the cost of the seeds, with the expenses of sowing and harrowing the same, with the quarter's rent and taxes, are to be allowed the outgoer, who must shut up the land as sown and keep it free from trespass after the 1st of November.

Where the incomer is allowed to enter upon the land in stubble, for the purpose of ploughing the same, on or about the 1st of November, the outgoer is to be allowed a quarter's rates and taxes chargeable on the land so taken.

The dung or manure made from the produce of the land, and which may not have been applied at the time when the outgoing tenant vacates, becomes the property of the landlord for the use of the incoming tenant.

No allowance is made for building, draining, or permanent improvements, unless the same be specifically covenanted for between the landlord and his tenant.

*Restrictions.*—Tenant is liable to a penalty of 10*l.* an acre for breaking old pasture or meadow land, or any larger amount which may be considered equivalent to the injury sustained, without his having previous permission in writing so to do from his landlord or the qualified agent. There is no definite restriction (in the absence of written agreements) as to white crops in succession.

Tenant has no *right* to sell hay or straw produced upon his farm; but, if the straw is formed into reeds or bouldings for the purpose of thatching, he is allowed to dispose of it.

*Rotation of Crops.*—The system of consecutive white cropping and heavy liming, which, used to be generally adopted in this county, even to the extent of five or six crops in succession, is becoming extinct. The system, among the best tenantry, is not to take two white crops in succession. Besides farm-yard dung, burnt ashes, guano and other artificial manures are now much used; and in some instances to the total exclusion of lime as a manure. The baneful result of the enormous application to the soil of lime is now very extensively acknowledged and condemned by our best agriculturists. Turnips, vetches, rape, and other green crops are produced to a very large acreage.

A rotation, in use by the best farmers, is turnips, wheat or barley, seeds, wheat or barley. Saintfoin is much grown in some parts of the country. In this case the land is broken up after five or six years, surface pared and burnt, and a four-course carried through.

[For my account of the customs of South Wales I am indebted to the kindness of Mr. Johnes, of Dolecothe, who conducted the tithe commutation of the whole of South Wales. The account of the South and South-east of Glamorganshire I received from Mr. Bradley, who has very extensive practice in that county.]

#### SECT 4.—*General Observations on the Customs.*

It will be observed that the foregoing customs are in the majority of instances adapted to a very rude state of agriculture. Perhaps the best established by long user are the customs which relate to the way-going crop, the commencement of the tenancy, the adscription of the manure to the farm, and in a few exceptional counties the allowance for tillages and half-tillages.

These are all condemned, as encouragements to bad farming, by eminent agriculturists. The way-going crop is a clumsy extension of the law of emblements, which cannot be too soon got rid of. It compels a man to carry on his business in two



distant places, creates loss of time and labour in passing his teams and workmen from one place to the other, and necessitates inconvenient arrangements, as to the occupation of different portions of his farm at different times. Moreover, it often renders it the interest of the outgoer, or at least allows him, to summer fallow land which under a proper system of farming should bear green crops. There is but one opinion as to the propriety of getting rid of this custom. The means adopted in Nottinghamshire, and some other counties, have been to buy up the interest of the present tenant, by giving him an equivalent in money and adding four per cent. upon that outlay upon the rent.

It is a general observation upon all these customs that they had their origin before the system of green crops was known to agriculture, and generally tend to discourage turnip growing and to perpetuate the system of summer fallows.

The commencement of the tenancy is also a consideration of some importance. Lady-day tenancies are now considered to be in all cases the best for arable farms; but in changing a Michaelmas to a Lady-day holding the tenant is entitled to a remuneration equal to nearly half a year's rent; for the period between Michaelmas and Lady-day is the half-year during which the farm is comparatively unproductive.

The customs relating to manure are the subject of some difference of opinion. Some agriculturists conceive that the incoming tenant should find his farm in working order when he takes to it: but I believe that it rarely happens in practice that, where an outgoer is obliged to leave his manure without compensation, the incomer will take to the farm without some allowance for the insufficient stock found in the yards. It is impossible for any custom to prescribe the strict and scientific economy of manure which is thought necessary to modern farming. Where the custom of leaving the manure without compensation prevails it has been found necessary for the interest even of the landlord to make some allowance for oilcake consumed during the last year, and in some instances even in the penultimate year (*n*). The same objection applies to the

(*n*) Mr. Hudson, of Norfolk, puts the value of cake eaten, one-half to the farm and one-half to the increased value of the cattle that eat it. Mr. Hutley, of Witham, and some other agriculturists,

plan adopted in some of the Lothian leases, of paying a fixed sum per cubic yard for all manure left in the yards. The quality of the manure depends upon the feed of the cattle; and this uniform price gives no return to the outgoer for oil-cake feeding. There are obvious difficulties in changing the established system in this respect, whether it may have been to pay for or not to pay for manure; but it is submitted that, where an option is possible, it is better that the outgoer be paid for his manure by valuation.

The half-tillages of the penultimate year of tenancy obtain but in few counties, and there appears to be a general opinion that they are unnecessary to the encouragement of the tenant to good husbandry, and are an inexpedient increase to the amount of tenant right. Practically they allow great opportunity of fraud in the outgoer and are very oppressive to the incomer. An exaggerated tenant right reduces the farm to a mere caput mortuum. This subject of tenant right will however be treated of more particularly hereafter.

#### SECT. 5.—*Construction and Operation in Law.*

The construction and operation of these customs have formed fruitful topics of litigation, and some of the cases deserve especial mention. We will state first those which have been decided as to parol tenancies.

#### *Operation of Customs in Parol Tenancies from Year to Year.*

*Way-going Crops.*—*Griffiths v. Tombs* (o), tried at the Hereford Lent Assizes, 1833, before Mr. Baron Parke, was in trover. It appeared that the plaintiff was the offgoing and the defendant the incoming tenant of a farm, of which the plaintiff's tenancy had expired at the Lady-day before the taking of the wheat. It further appeared that, by the custom of the country, an offgoing tenant is entitled to crop one-third of the arable land of the farm with wheat, and to take, cut and

calculate two-thirds to the cattle, and one-third to the farm; while Mr. Huxtable and Mr. Lawes appear to think, that in addition to whatever may be the increased value of the cattle fattened, the land receives four-fifths of the fertilizing

properties of the cake. See *Agricultural Customs Report, Evidence*, 1884; *Huxtable on Present Prices*; and *Journal of Agricultural Society*, vol. viii. p. 256.

(o) 7 C. & P. 810.

carry away that wheat after the tenancy has expired, this being called the odd mark. It was proved that the plaintiff had sowed three acres more than his proper odd mark by the permission of the landlord; and that, after the wheat had been cut by the plaintiff, the defendant carried away the wheat in question. Parke, B., held that a parol permission by the landlord to the outgoing tenant to sow more than his strict odd mark will be good against the landlord himself, and consequently as against the incoming tenant; and this ruling was sustained by the Court of King's Bench upon a subsequent motion (*p*).

In this case it would appear that there was a special agreement between the outgoing and incoming tenant that the latter should pay his outgoing allowances to the former according to custom. Instances have, however, occurred to me in practice wherein it has been alleged to be the custom of the country that the incoming *tenant* shall be liable to the outgoer for his allowances, and wherein actions have been commenced against the incoming tenant, after he has been in possession, (and not against the landlord) for the value of such allowances. I cannot believe that such a custom exists in fact or that it would be good in law, but our precedent books certainly contain precedents for declarations and pleas in actions founded upon such a custom. If established it would involve this inconvenience, which I have seen actually occur in practice, that an outgoer may sue the succeeding tenant for outgoing allowances while he owes a larger sum in arrears of rent to the landlord. The rent due to the landlord cannot of course be set off in an action brought against the tenant.

*Caldecott v. Smythies* (*q*), tried before Mr. Baron Parke, at the Hereford Assizes, in 1837, was very similar to the last-mentioned case in its facts. The declaration was in trespass for entering the close of the plaintiff and cutting down and taking away corn. The defendant pleaded that plaintiff was not possessed of the close or the corn.

Parke, B., in summing up, said:—"The plaintiffs are not entitled to the possession of any part of this farm, and should give up the entire possession of it, crops and everything else,

when the tenancy expires, except there is a custom, which custom must here be made out by the plaintiffs. The custom in this part of the country, as proved by the witnesses, is, that where there is an excess above one-third as the odd mark, the outgoing tenant keeps possession of the whole till the harvest, and it is then divided; but there is no witness speaks to what the custom is if there be a whole field of excess. The first question is, whether the whole of his field was an excess. If it was, the plaintiff has not given you sufficient evidence to justify you in finding that the outgoing tenant is entitled to keep possession of an additional field, the whole of which is clearly an excess. If the whole field was not an excess, the custom gives the tenant a right to the possession of it till harvest. But, as whatever is above one-third the landlord would have, as he would be entitled to take the last sown, and this is the last sown, it would be a case only of nominal damages, unless the outgoing tenant had a lien for the expenses. You will say whether on this evidence you are satisfied he had that lien. If he had, he is entitled to damages for the loss of it; but, if he had no such lien on the crop, the amount of ploughing and sowing could only be the subject of a cross action."

In the counties where the custom allows the outgoer to take a half or two-thirds of his offgoing wheat crop, the tithes were generally set out before the crop was divided. Since the commutation of tithes into a rent-charge the question has arisen, whether the old practice is to continue, or whether the outgoer and incomer shall contribute rateably to the rent-charge apportioned upon the fields in crop. The more prevalent practice appears to be that the custom continues as before, the incomer retaining the tithe produce and paying the rent-charge. This seems to be consonant with that which may be considered as the most universal of all agricultural customs, namely, that a tenant shall quit as he takes. The outgoer, if he held before the Commutation Act, had the option as an incomer of compounding with the tithe-owner and retaining the straw of the tithe corn. There can be no injustice in making him allow to his successor the advantage which he received from his predecessor. If the opinions of practical agriculturists of the impolicy of this custom of away-going crops

should fail to discourage and eventually to abolish it, there will soon grow up in each district a custom which will regulate this point. As the law now stands, the tenant has nothing to do with the tithe rent-charge, unless he shall specially agree to pay it. If he pay it without such agreement, he may deduct it from his rent. The Tithe Commutation Act, 6 & 7 Will. IV. c. 71, s. 80, provides, that every tenant or occupier who shall occupy any lands by any lease or agreement made subsequently to the commutation, and who shall pay any such rent-charge, shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord.

An agricultural custom, like every other custom, must be reasonable on the face of it, or it will not be recognised by the Courts, however ancient or general it may be (r).

*Operation of the Custom of the Country in Cases of  
Lease or special Agreement.*

The custom of the country can only be excluded by the express words of an agreement, or by some evident repugnancy between the terms of the agreement and the conditions of the custom; and it has been held that the custom of the country applies, even though the witnesses who prove the existence of the custom cannot undertake to say whether it applies when the lease is in writing (s).

This principle of law is so important in agricultural tenancies that I shall insert in extenso the judgment of the Court of Exchequer in the modern case of *Hutton v. Warren* (t), in which all the cases are considered and the rule of law settled.

Parke, B., delivered the judgment of the Court, and, after stating the pleadings, continued:—"It appeared on the trial that the plaintiff took the farm of the late incumbent, the father of the defendant, on the 2nd of January, 1811, by a lease under seal, comprising the tithes of the parish also, at the rate of 150*l.* for the farm and 200*l.* for the tithes, payable at Michaelmas and Lady-day, for the term of six years from Lady-day, 1811, if the lessor should so long continue incumbent.

(r) *Bottomley v. Forbes*, 5 Bing. N. C. 128.

(s) *Wilkins v. Wood*, 12 Jur. 593.  
(t) 1 M. & W. 466.

The plaintiff occupied till October, 1832, when the incumbent resigned, and the defendant, his son, succeeded him in the living. The plaintiff continued to occupy the farm and tithes, paying the same rent at the same times, until Lady-day, 1834, when he quitted, in pursuance of a notice given to him by the defendant; and he claimed in this action for seed and labour due to the offgoing tenant by the custom of the country.

“The defendant resisted the claim, on the ground that he held under the terms of the written lease, and that by those he was not entitled to any such allowances.

“It was proved, that by the custom of the country a tenant was bound to farm according to a certain course of husbandry for the whole of his tenancy, and at quitting was entitled to a fair allowance for seed and labour on the arable land, and was obliged to leave the manure if the landlord would purchase it.

“In October, 1833, after the notice to quit, the defendant, his agent, and the plaintiff had an interview, and the agent insisted that the plaintiff should sow the arable land, and that he was bound to keep the farm in regular course. The plaintiff did afterwards sow the arable land, for which he claimed the compensation in question.

“Two points were made on the argument before us: first, whether the plaintiff was bound by the terms of the lease at all, after the resignation of the lessor; secondly, whether, if he was, those terms excluded him from this claim.

“Upon the first point, we think that the plaintiff must be taken, in the absence of evidence to the contrary, to have held under the defendant on the same terms that he held under his father, so far as those terms were applicable to a tenancy from year to year. No evidence was given to the contrary on the trial; and indeed this objection does not appear to have been there raised on the part of the plaintiff.

“The second question requires some consideration. The custom of the country as to cultivation, and the terms of quitting with respect to allowances for seed and labour, is clearly applicable to a tenancy from year to year; and therefore, if this custom was by implication imported into the lease, the plaintiff and defendant were bound by it after the lease expired.

“We are of opinion that this custom was, by implication, imported into the lease.

“It has long been settled, that in commercial transactions extrinsic evidence of custom and usage is admissible to annex incidents to written contracts in matters with respect to which they are silent. The same rule has also been applied to contracts in other transactions of life in which known usages have been established and prevailed. And this has been done upon the principle of presumption, that in such transactions the parties did not mean to express in writing the whole of the contract by which they intended to be bound, but a contract with reference to those known usages.

“Whether such a relaxation of the strictness of the common law was wisely applied, where formal instruments have been entered into, and particularly leases under seal, may well be doubted; but the contrary has been established by such authority, and the relations between landlord and tenant have been so long regulated upon the supposition that all customary obligations not altered by the contract are to remain in force, that it is too late to pursue a contrary course; and it would be productive of much inconvenience if this practice were now to be disturbed.

“The common law indeed does so little to prescribe the relative duties of landlord and tenant, since it leaves the latter at liberty to pursue any course of management he pleases, provided he is not guilty of waste, that it is by no means surprising that the Courts should have been favourably inclined to the introduction of those regulations in the mode of cultivation which custom and usage have established in each district to be the most beneficial to all parties.

“Accordingly, in *Wiglesworth v. Dallison*, afterwards affirmed on writ of error, the tenant was allowed an away-going crop, though there was a formal lease under seal. There the lease was entirely silent on the subject of such a right, and Lord Mansfield said that the custom did not alter or contradict the lease but only superadded something to it.

“This question subsequently came under the consideration of the Court of King’s Bench, in the case of *Senior v. Armitage* reported in Mr. Holt’s *Nisi Prius Cases*; in that case, which

was an action by a tenant against his landlord for a compensation for seed and labour under the denomination of tenant-right, Mr. Justice Bayley, on its appearing that there was a written agreement between the parties, nonsuited the plaintiff. The Court afterwards set aside that nonsuit, and held, as appears by a manuscript note of that learned judge, that though there was a written contract between landlord and tenant, the custom of the country would be still binding, if not inconsistent with the terms of such written contract; and that not only all common-law obligations, but those imposed by custom, were in full force where the contract did not vary them. Mr. Holt appears to have stated the case too strongly when he said that the Court held the custom to be operative, 'unless the agreement in express terms excluded it;' and probably he has not been quite accurate as attributing a similar opinion to the Lord Chief Baron Thompson, who presided on the second trial.

"It would appear that the Court held that the custom operated, unless it could be collected from the instrument, either expressly or impliedly, that the parties did not mean to be governed by it.

"On the second trial, the Lord Chief Baron Thompson held that the custom prevailed, although the written instrument contained an express stipulation that all the manure made on the farm should be spent on it, or left at the end of the tenancy without any compensation being paid. Such a stipulation certainly does not exclude by implication the tenant's right to receive a compensation for seed and labour.

"The next reported case on this subject is that of *Webb v. Plummer*, in which there was a lease of down land with a covenant to spend all the produce on the premises, and to fold a flock of sheep upon the usual part of the farm; and also, in the last year of the term, to carry out the manure on parts of the fallowed farm pointed out by the lessor, the lessor paying for the fallowing land and carrying out the dung, but nothing for the dung itself, and paying for grass on the ground and threshing the corn. The claim was for a customary allowance for foldage (a mode of manuring the ground); but the Court held, that, as there was an express provision for some payment



on quitting for the things covenanted to be done, and an omission of foldage, the customary obligation to pay for the latter was excluded. No doubt could exist, in that case, but that the language of the lease was equivalent to a stipulation that the lessor should pay for the things mentioned and no more.

“ The question then is, whether, from the terms of the lease now under consideration, it can be collected that the parties intended to exclude the customary obligation to make allowances for seed and labour.

“ The only clause relating to the management of the farm (except the covenant to repair) is one which stipulated that the plaintiff shall spend and consume on the farm three-fourths of the hay and straw, arising not only from the farm itself but from the demised tithes of the whole parish; and spread the manure, leaving such as should not be spread at the end of the term for the use of the landlord, on paying a reasonable price for the same. This provision introduces and has a principal reference to a subject to which the custom of the country does not apply at all, namely, the tithes; and imposes a new obligation on the tenant dehors that custom, and then qualifies that obligation by an engagement on the landlord's part to give a remuneration by repurchasing a part of the produce in a particular event. It is by no means to be inferred from this provision that this is the only compensation which the tenant is to receive on quitting. If, indeed, there had been a covenant by the tenant to plough and sow a certain portion of the demised lands in the last year, being such as the custom of the country required, he being paid on quitting for the ploughing; or to plough, sow, and manure, he being paid for the manuring; the principle of *expressum facit cessare tacitum*, which governed the decision in *Webb v. Plummer*, would have applied: but that is not the case here. The custom of the country, as to the obligation of the tenant to plough and sow, and the corresponding obligation of the landlord to pay for such ploughing and sowing in the last year of his time, is in no way varied. The only alteration made in the custom, is that the tenant is obliged to spend more than the produce of the farm on the premises, being paid for it in the same way as he would have been for that which the custom required him to spend.

"We are therefore of opinion that the plaintiff is entitled to recover."

This lucid and most important judgment is worthy of careful study. It is a full exposition of the general principle which governs the application of a custom to the terms of a written agreement.

But if the custom is inconsistent with the agreement the express contract prevails.

In the case of *Roberts v. Barker* (t), decided by the Court of Exchequer in Trinity Term, 1833, the plaintiff, a farmer, held the farm as tenant from year to year, after the expiration of a lease for twenty-one years. The expired lease contained a provision that the tenant on quitting should not sell or take away the manure which should then be in the fold, but should leave it to be expended on the land by the landlord or his succeeding tenant. The custom of the country was that the outgoer should leave the manure in the fold, and be paid for it by the incomer. It was held, that under this tenancy the outgoer was not entitled to be paid for the manure. Lord Lyndhurst, C. B., said, "The original lease contained a covenant that the tenant, on quitting the farm, should not sell or take away the manure which should then be in the fold. It is to be left for the incomer's use, and there is no provision for any payment in respect of it. It was contended, that the stipulation to leave the manure for the use of the lessors was not inconsistent with the tenant's being paid for what was so left: that the custom to pay for the manure might be grafted upon the engagement to leave it for the use of the lessors. But if the parties were to be governed by the custom in this respect there was no necessity for any stipulation, as by the custom the tenant would be bound to leave the manure, and would be entitled to be paid for it."

It appears that the custom which gives the outgoer away-going crop does not lose its force, even although the tenant has only brought himself within the scope of the custom by a breach of an express agreement with his landlord.

The case of *Holding v. Pigott* (u) came before the Court upon demurrer, and the pleadings are set forth in full in the report. The plaintiff, in his replication, set out a custom

(t) 1 C. & M. 808.

(u) 7 Bing. 465.

within the parish, for every tenant and occupier of land in the parish, holding from year to year, whose tenancy of land expires at Lady-day, where he has sown any of his lands with wheat on a fallow at the wheat seedness next before the expiration of his tenancy, and has afterwards reaped the wheat growing on such land, as and for a part of his away-going crop, to take and enjoy to his own use two third parts of such wheat, and to leave the other third to the incoming tenant; and where such tenant has sown any such crop with wheat after a crop of turnips, at the wheat seedness next before the expiration of his tenancy, to take to his own use, and to reap, cut, and carry away, when ripe and fit to be reaped and carried away, his away-going crop: that is to say, one half of the wheat so sown after the crop of turnips; and to leave the other remaining half-part thereof for the use of the incoming tenant.

In answer to this replication the defendant rejoined that the plaintiff held his farm under and subject to the following conditions:—that is to say, that he should not grow more than twenty-two acres of winter corn in any year; that the wheat should be summer fallowed and well manured for the crop; that the plaintiff should spend all the fodder on the premises, and occupy the land in a husbandlike manner. The defendant then alleged that the plaintiff did not summer fallow the field in which, &c., and well manure the same for the said crop of wheat; but, on the contrary, sowed the field with wheat at the wheat seedness next before the expiration of his tenancy, without summer fallowing and well manuring the same for the said crop of wheat, the said field having been sown with and producing a crop of turnips in the season next before the wheat seedness, when the seed field was sown with wheat.

Tindal, C. J., in delivering the judgment of the Court, said:—"It seems clear that the plaintiff, in order to show any title to the wheat, must bring himself within the custom of the away-going crop; for inasmuch as the wheat was growing at the time it was cut on land occupied by the defendant, such wheat would *prima facie* belong to him, and the plaintiff could only make title to it either under a reservation in his former lease, which being granted by the same person under

whom the defendant holds and being prior in point of date, would bind the defendant, or by a custom which binds the plaintiff and his former landlord, and through him the present defendant: but there was no reservation in the lease, and consequently the plaintiff's right, if it exists, must depend upon bringing his case within the custom.

"It is contended however, on the part of the defendant, that the plaintiff held on such terms as exclude the application of the custom at all; or, in other words, that, holding as he did, on the condition that the wheat land should be summer fallowed, no custom in the parish, for away-going crop of wheat sown after a crop of turnips, could apply to his case."

His Lordship then, after stating that if any condition is found in the lease necessarily repugnant to or inconsistent with the custom the latter is excluded, and that the custom can only be called in aid when the lease is silent upon the subject, remarks that the agreement in the case then under consideration was silent as to terms of quitting, and that the custom does not come into force until the expiration of the term. "The rights of the landlord and tenant may be governed by the terms of the agreement during the tenancy, and by the terms of the custom immediately afterwards; and this distinguishes the case from *Webb v. Plummer* (x), where there were express stipulations relating to the rights of the outgoing and incoming tenant at the termination of the lease, and which therefore were held to exclude the custom.

"In the next place, it is to be observed that the custom is in the affirmative, namely, that the tenant shall have one proportion of the wheat for away-going crop if sown after a summer fallow; another proportion if sown after turnips. The covenant in the lease is affirmative also; namely, that the wheat land shall be summer fallowed. Why may not the affirmative custom and the affirmative covenant subsist together; the landlord having a right to recover a compensation in damages, if the affirmative covenant is not observed: the tenant, on the other hand, claiming his away-going crop in wheat sown after turnips according to the affirmative terms of the custom?

(x) 2 B. & A. 746.

“ We think the custom still applies to give the offgoing tenant the right to a proportion of the corn sown by him after turnips, leaving the landlord to his remedy for breach of covenant.”

Where a tenancy was determined by special agreement after Lady-day, but the agreement was silent as to away-going arrangements, and the usual custom of the country was Lady-day tenancies; it was held that the tenant was not entitled to the customary away-going crops, as he would have been upon the determination of a regular Lady-day tenancy (y).

Where a tenancy has existed under special covenants as to cultivation, but the tenancy is expired and the tenant holds over, the mere act of holding over does not imply a continuance of the special covenants (z).

*Remedies for Breach of Custom, and Pleading.*—If a tenant from year to year under notice to quit should be doing damage, removing crops or manure, or acting contrary to the custom of the country, an injunction may be obtained in Chancery to restrain him from so doing (a).

In an action against a tenant for not cultivating a farm according to the course of good husbandry and the custom of the country, if the plaintiff in his declaration sets out the custom, and the defendant by his plea denies the custom, the plaintiff must prove it as alleged (b).

Where a plaintiff in his declaration stated that in consideration that the defendant had become tenant to the plaintiff on a farm, the defendant undertook to make a certain quantity of fallow, and to spend 60*l.* worth of manure every year thereon, and to keep the buildings in repair, this was held bad on general demurrer: because these conditions were not alleged to be the rules of good husbandry according to the custom of the country, and without such custom they are not obligations which arise out of the bare relation of landlord and tenant (c).

(y) *Thorpe v. Eyre*, 3 Nev. & M. 214; 1 Ad. & E. 926.

(z) 2 Ves. & B. 349; but see *Hutton v. Warren*, 1 M. & W. 466.

(a) 11 Ves. jun. 173.

(b) 1 C. M. & R. 789; 5 Tyrw.

583; 1 Gale, 8; 4 Bing. N. C. 687; 6 Sco. 497: as to variance, see 8 D. & R. 643; 5 B. & C. 909; 4 Taunt. 700.

(c) 1 Marsh. 567.

Where a declaration in case stated that defendants were tenants to the plaintiff of a farm, and by reason thereof it was their duty to cultivate in a husbandlike manner, according to the custom of the country; and assigning breaches in over cropping, &c., it was held that a plea that the defendants were not tenants in manner and form, &c., only put in issue the bare fact of the tenancy, and not the holding subject to the custom of the country (*d*).

A declaration upon an implied promise to manage a farm in a husbandlike manner according to the custom of the country, and assigning as breach that the defendant had not managed, &c., according to the custom of the country, was thought sufficient; but the Court recommended an amendment by setting out the particular facts of mismanagement (*e*).

Under a particular charging the defendant with non-cultivation of a farm, evidence of bad cultivation is not admissible; non-cultivation signifying leaving the land waste (*f*).

*Upon whom Customs are binding.*—It will be observed, from the pleadings in the cases already cited, that the customs which are commonly called customs of the country divide themselves into two very distinct classes. The first, such as the away-going crop custom, controls and varies an express principle of the general law which gives to the landowner the land and all that has become part of the freehold, as soon as the tenancy is determined. The second, such as the custom against removing hay or straw, or against taking more than two or three crops to a fallow, does not control or vary the express provisions of the general law; but only explains those provisions and ascertains their mode of operation. The first gives to the tenant a right which the general law would deny him; the second only ascertains with exactitude the obligations which the general law imposes, when it requires the tenant to cultivate the land according to the rules of good husbandry. The first, therefore, must be pleaded as an immemorial unvarying custom: the second may be given in evidence without being pleaded, and amounts to no more than

(*d*) 4 M. & W. 662; 7 Dowl. P. C. 342.

(*e*) 1 C. & M. 89; 3 Tyrw. 26.

(*f*) *Doe d. Winnall v. Broad*, 2 Sco. N. R. 685; S. C., 2 Man. & G.

523; 1 Drinkw. 113; and see *Martin v. Gilham*, 7 Ad. & E. 540; S. C., 2 Nev. & P. 568; and *Edge v. Pemberton*, 12 M. & W. 187; S. C., 1 D. & L. 467.

proving the rules of good husbandry, by proof of the general practice of the neighbourhood.

If I am right in this classification, for which however I find no direct authority in the books, it will follow that all customs that give to the tenant any right to retain the land after the determination of his tenancy, or to take from it any agricultural fixtures which have been attached to the freehold, or to receive compensation for any improvement of the soil, must be proved to have existed from time whereof the memory of man runneth not to the contrary, in order to bind the landlord. Where the custom has been of any considerable duration, it will probably be capable of proof that the tenant had paid the amount of the valuation under the custom to a former tenant, and in *Senior v. Armitage* (g), Thompson, L. C. B., dwelt upon proof of this fact as conclusive evidence of the custom. As against the landlord who had let the farm, the fact of payment of the amount of such a valuation would probably be evidence of the terms of the parol tenancy without reference to any custom: but as against a remainderman who obtains possession of the estate after the determination of the interest of a landlord, tenant for life, and who has done no act to continue the tenancy from year to year, the books are very barren of authority as to how far he would be bound. If the custom is an immemorial custom attaching to the land, all persons, except the Sovereign (whom by virtue of prerogative no district customs bind), would take the land subject to the custom, just as a copyholder takes copyholds, or as the common-law heir is excluded from gavelkind lands (h): but in the numerous cases in which allowances for tillages and improvements are to be traced to a comparatively modern origin, it appears to be the opinion of the profession that a remainderman would not be bound (i). Where a remainderman accepts rent from the tenant, it would probably be held that he continues the tenancy upon the former terms (k). But numerous cases must hereafter arise (when the adoption of allowances for improvements becomes, as it promises to be,

(g) Holt, 198.

(h) See *James v. Tutney*, Cro. Car. 497.

(i) See the evidence of Mr. James Stewart and Mr. Hoskyns,

in the Report of Mr. Pusey's Committee on Agricultural Customs.

(k) See *Doe v. Watts*, 2 Esp. 501; *S. C.*, 7 T. R. 4; *Roe v. Ward*, 1 H. Bl. 100.

almost universal) wherein the guardians of an infant remainderman may not find it safe to continue the burden of a heavy tenant right by an acknowledgment of the tenancy; and in such case the tenant would not, as it is submitted, be protected by any usage which he could not prove to have all the legal requisites of an immemorial custom.

The landowner and his tenant are the parties who are bound by the custom of the country: but it has been said that the incoming tenant (a third party who was not at all privy to the original contract) may be entitled to an action for breach of the conditions which the custom of the country has attached to that contract. Thus, in the marginal note to *Boraston v. Green* (l), it is said that an incoming tenant may maintain an action against the outgoing tenant for a breach of the customs of husbandry in the place, in not leaving one third of the away-going crop of wheat sown upon a clover brush. This, however, is scarcely warranted by the text, and Bayley, J., in his judgment lays it down distinctly, that the landlord, and not the incoming tenant, is the proper party to have a remedy against an outgoer for the abuse of the land. (m)

(l) 16 East, 81.

(m) See *ante*, p. 123.



## CHAPTER V.

OF TENANCIES FROM YEAR TO YEAR CREATED OR  
GOVERNED BY WRITTEN INSTRUMENTS.§ 1. *Nature of the Instrument generally.*

Proposals to take.—Particulars of Tenancy.—Declaration as to Custom of the Country.—Acknowledgment of Terms of Tenancy.—Agreement for a Lease.—Distinction between a Lease and an Agreement.

§ 2. *Effect of Occupation under Agreement.*

As to Landlord's Remedy by Distress.—As to Covenants agreed to be inserted in Lease.—Alteration of Amount of Rent.—Who are bound by Agreement.—Proposed Alterations in the Law.

§ 3. *Effect of occupation under Lease.*SECT. 1.—*Nature of the Instrument generally.*

FROM the uncertainty of the exposition we have been able to give of the customs of the country throughout England and Wales, it will be sufficiently manifest that no prudent person should either let or take a farm without having the terms of the tenancy reduced to writing. The most secure and correct method is to execute a lease; the most usual is to commit the terms of the tenancy to writing in some manner not amounting to a lease. The former, in tenancies from year to year, has hitherto been commonly objected to on account of its expense; the latter is at present in more general use.

The single object in not adopting the form of a lease is the expense. Until the passing of the stamp act of the last session, the provisions of which will be found set forth in a subsequent chapter, the stamps upon a lease were a matter of considerable importance when the term is of so uncertain

duration as from year to year; still more so where the holdings are small. It is true that a lease from year to year is as valid when written upon paper as when engrossed upon parchment; that it is as valid when only signed as when signed and sealed; that it may as well be a printed form as an engrossment from an original draft. It is, in fact, difficult to discover a sufficient reason why hereafter any other form of letting should be used than a lease: for the stamp duties have been so much reduced that the superior character of a lease will much more than compensate the difference in the expense, provided the lease be a printed paper and the only cost the stamps. We must deal however with matters of general practice, not as they might best be, but as they are.

The forms of writing found in most extensive use are as follows:—

1st. *Proposals to take*.—These documents usually run, “I propose to take of A. B. the Grange Farm from Michaelmas, 185 , on the following terms:—” The landlord usually indorses upon the proposals an acceptance of the tenant, and sometimes a receipt of a shilling on account of the rent reserved.

The mere proposal would require no stamp; but the indorsement of acceptance by the landlord would probably render the document a lease, and render it liable to be stamped as a lease before it could be given in evidence (a).

2nd. *Particulars of Tenancy*.—Upon many estates it is customary to have a printed form of the particulars of the terms of tenancy. When a tenant is accepted the paper is read over to him, and he has a copy of it given him. This is considered an evidence of a parol lease, or agreement for a lease; but, in strictness, it can only be used to refresh the memory of the witness who proves the parol letting (b).

3rd. *Declaration as to the Custom of the Country*.—This likewise is, upon extensive estates, a printed paper, and it sets

(a) *Pinero v. Judson*, 6 Bing. 206; *Chapman v. Black*, 4 Bing. N. C. 187; but see *Jones v. Rey-*

*nolds*, 1 Q. B. 515.

(b) See *Lord Bolton v. Tomlin and others*, 5 Ad. & E. 856.

forth the custom of the country in the district in which the farm is situated. The tenant signs it.

4th. *Acknowledgment of Terms of Tenancy*.—This varies from the preceding form only in that it is an evidence of a special parol contract, instead of being only an admission of the custom which governs the district. It runs, "I hereby acknowledge that I have this day become tenant of A. B., of, &c. [or that I hold of A. B., the same being now in my occupation], the farm called the Grange Farm, situate in the parish of Alveley, in the county of Salop, and containing, &c., upon the terms following, &c."

The last expedient has this advantage, that it certainly is not a demise, and (although it might be more prudent to use a 2s. 6d. stamp) would probably not be considered an agreement. It will ascertain the terms of the tenancy; and, in the case of very small holdings, will perhaps be found to answer the circumstances of the parties (c). It should be signed, but not attested. A memorandum of the signature should be made and entered in a book by some person who saw the document executed. But there is a disadvantage in having the name of an attesting witness upon the document, because in that case the witness must be called or his absence accounted for.

The legal operation of these documents will however depend upon whether they amount to a lease or an agreement for a lease, or a mere proposal, or a bare attornment. The two first require to be stamped according to their nature and amount. The third and fourth require no stamp.

An important decision upon this subject is *Drant v. Brown* (d). The document was, "Memorandum, that I, George Drant, do offer Mr. Brown, &c. &c., upon the same conditions as the said Brown now holds other land of Grant." The conditions referred to were contained in a stamped agreement. This memorandum was signed only by Drant. The Court held it to be a mere proposal, not requiring a stamp. In giving judgment, Abbott, C. J., said, "I quite agree, that if a bargain made by parol is afterwards reduced into writing, that is the perfection of the agreement. But here the order

(c) See *Doe d. Wright v. Smith*, *Edwards*, 5 Ad. & E. 95.  
8 Ad. & E. 255; *Doe d. Linsey v.* (d) 3 B. & C. 665.

was reversed : a written proposal was made at the first meeting, and then it was uncertain whether there would or would not be a contract. The fact as to the agreement between Brown and Grant was first to be ascertained. Then an agreement was made by parol that Brown should have the land on certain terms. The writing signed by the plaintiff was a mere proposal, and was never signed by Brown." Bayley, J., said, "The paper contained a mere proposal to let the land according to the terms contained in another paper, which was stamped; and the parties ultimately agreed to those terms by parol. The second paper contained therefore neither an agreement nor a minute or memorandum of an agreement." By Holroyd, J.: "This was a mere proposal. If it had been accepted in writing, it must have been stamped; but, being accepted by parol, the agreement was in law a parol agreement."

It appears, therefore, that a proposal to take, signed by the tenant, will be evidence of the terms of a subsequent parol tenancy, and will not require a stamp (e).

5th. *An Agreement for a Lease*.—This is the most usual, and, it is submitted, the most expedient form of a tenancy agreement. It is true that the great majority of agreements in use are in fact leases, and would require to be stamped as such before they could be used; but it is not difficult to draw an agreement for a lease in such terms as to obviate any question of its being an actual demise. The inconveniences which would probably arise upon attempting to enforce a culture stipulation under any of the other expedients above noticed would be infinitely greater than could be compensated by the saving of the stamp.

Therefore an agreement for a lease is the form of tenancy agreement recommended, where the parties entertain an objection to the expense of an actual lease.

The distinction between a lease and an agreement for a lease was, until quite recently, and indeed in many instances still is, a question of great nicety; and the cases upon the subject are very numerous, and not easily to be reconciled. The general rule is, that it depends upon the intention of the parties as

(e) See also *Vollans v. Fletcher*, 18 L. J. 82, Ex.

1 Exch. 20; and *Willey v. Par-*

that intention can be collected from the instrument (*f*). The mere use of the word "agreement" will not prevent the instrument taking the character of a lease (*g*); nor will even a clause for the future execution of a lease have this effect, if the intention of the parties appear to the Court to have been to create a lease (*h*). On the other hand, instruments have been held to be agreements and not leases, even where there were words of present demise—as, "doth demise," "doth let," "shall enjoy" (*i*)—where the Court inferred from the instrument that it was only intended by the parties to be the preliminary to a formal lease.

There are several hundreds of cases upon this subject in the books; but the rule has always been to inquire what was the intention of the parties, although the Courts have not unfrequently drawn opposite conclusions from circumstances that would appear to be identical. The subject is too large to be fully treated here (*k*); and its importance has now become less since the passing of the Real Property Act, 8 & 9 Vict. c. 106, whereby (sect. 3 (*l*)) it is enacted, that "a lease, required by

(*f*) *Doe d. Jackson v. Ashburner*, 5 T. R. 163; *Poole v. Bentley*, 12 East, 168; 2 Camp. 286; *Morgan d. Dowding v. Bissett*, 3 Taunt. 65; *Perring v. Brook*, 7 C. & P. 360; *Chapman v. Black*, 4 Bing. N. C. 187; 5 Sco. 515; *Pinero v. Judson*, 6 Bing. 206; *Doe d. Pearson v. Ries*, 8 Bing. 178; 1 Moo. & S. 259; *Alderman v. Neate*, 4 M. & S. 704; *Chapman v. Townner*, 6 M. & W. 100; *Brasier v. Jackson*, 6 M. & W. 549; *Jones v. Reynolds*, 1 Q. B. 506; *Gore v. Lloyd*, 12 M. & W. 463.

(*g*) *John v. Jenkins*, 1 Crompt. & M. 233.

(*h*) *Wright v. Trevesant*, 3 C. & P. 441; 1 Moo. & M. 231.

(*i*) *Barry v. Nugent*, 5 T. R. 165, n.; 3 Doug. 179; *John v. Jenkins*, 1 Crompt. & M. 227; *Doe d. Jackson v. Ashburner*, 5 T. R. 163.

(*k*) The cases will be found fully discussed in Mr. Platt's work on Leases, vol. i. p. 579; and in Woodfall's Landlord and Tenant, p. 118.

(*l*) The section enacts, "That a feoffment made after the said first day of October, 1845, other than a feoffment made under a custom by an infant shall be void at law unless evidenced by deed; and that a partition and an exchange of any tenements or hereditaments not being copyhold, and a lease required by law to be in writing of any tenements or hereditaments, and an assignment of a chattel interest not being copyhold in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been enacted without writing, made after the said first day of October, 1845, shall also be void at law, unless made by deed." This statute repealed a previous Act, 7 & 8 Vict. c. 76, which however still governs leases made between the 1st January and the 1st October, 1845. Instruments executed before the 1st January, 1845,

law to be in writing, of any tenements or hereditaments, shall be void at law unless made by deed." This provision does not apply, however, to a demise from year to year, for the Statute of Frauds (29 Car. II. c. 3), which enacted, that leases not put in writing and signed shall have the force of estates at will only, expressly excepted all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved shall amount to two third parts of the full improved value of the thing demised.

The distinction therefore, between an actual lease and an agreement for a future lease, still remains as doubtful as before the statute of 8 & 9 Vict. in all cases of demise not within the Statute of Frauds.

It is sufficient however, for all practical purposes connected with the subject of this work, if it be possible, by a form of words, to obviate all doubt upon this subject, and to draw an instrument which shall certainly amount to an agreement, and shall as certainly not amount to a lease.

This object appears to be of easy attainment since the recent cases of *Perring v. Brook* (m) and *Doe d. Morgan v.*

are within the operation of the old law. Upon the construction of this last-mentioned Act, see *Arden v. Sullivan*, 19 L. J., Q. B. 268.

(m) 1 Moo. & R. 510; 7 C. & P. 360. In this case the form of agreement was as follows:—"An agreement made between Philip Perring, of, &c., Esq., Benjamin Barnard, of, &c., and Thomas Gaitskell, of, &c., Esq., for themselves, their heirs, executors, and administrators, on the one part, of Sarah Brook, of, &c., widow, for herself, her executors, administrators, and assigns of the other part.

"The said P. P., B. B., and T. G., hereby agree that they will by indenture grant to the said S. B., and the said S. B. hereby agrees that she will accept, a lease of all that piece or parcel of ground (describing it) for the term of fifty-six years, &c., at the rent, &c. And it is agreed that in the said lease so to be granted shall be contained covenants to pay rent and

taxes, and to repair; and also a condition, authorizing the re-entry of the said P. P., &c., for non-payment of rent, or non-performance of covenant.

"And that, until such lease and counterpart shall be executed, the rent, covenants, and conditions agreed to be therein respectively reserved and contained, shall, as nearly as circumstances will permit, be paid, observed, and performed, as if the same had been actually executed; and particularly, that any right of re-entry, which, in case such execution had actually taken place, might or could have been enforced by the said P. P., B. B., and T. G., their executors, administrators, or assigns, shall and may be exercised and enforced, if they shall think fit, by declaring this agreement absolutely null and void, and retaking the said premises accordingly. Provided always, that these presents, or anything herein contained, shall not operate, or be construed or

*Powell* (n). In the former case the rule was laid down by Coleridge, J., as follows:—"The cases on this subject are very numerous; but the principle which governs them all is this, that the intention of the parties collected from the terms of the instrument must determine whether that instrument be a lease or only an agreement. Here there are undoubtedly some clauses from which, if they stood alone, one would have inferred an intention that the instrument was to have the effect of a lease; but where there is an express proviso declaring that notwithstanding those clauses the instrument is to operate only as an agreement, I am clearly of opinion that I must treat it as an agreement and not as a lease." In the latter case the point did not directly arise; but, in the course of his judgment, Coltman, J., observed, "The question for us to determine is, whether it was the intention of the parties when they entered into the contract now under discussion that the interest in the term of seventy years in the minerals should thereby pass, or whether such interest was to pass only upon the execution of a complete and formal lease. It is impossible to deny that great difficulty exists in questions of this nature. *Where the parties expressly declare that the instrument shall operate only as an agreement for a future lease, there is no room to doubt.* But in a case like this," &c.

These cases appear to make it clear, that the insertion of a clause—"And it is further agreed between the parties to this agreement, that the agreement shall not have the effect of a present demise, but shall operate only as an agreement for a future lease"—will obviate all doubt as to the nature of the instrument.

## SECT. 2.—*Effect of Occupation under Agreement.*

The due execution of an agreement for a lease enables either party to obtain by aid of Chancery a formal lease in accordance with the terms stated in the agreement; or either party, on refusal to grant or take a lease, may bring an action for breach of the agreement. But these remedies are not within the scope of this work.

taken to operate as a lease or actual demise of the said premises, or any part thereof, or any further or

otherwise than as an agreement for a lease."

(n) 8 Sco. N. R. 687.

In the light in which we here contemplate an agreement for a lease, the signature of the agreement is followed by the entry of the tenant, who occupies and cultivates the farm until his tenancy is determined by a regular notice, without any other document than this agreement.

The mere taking possession of the farm after the signature of the agreement does not render the person entering a tenant from year to year, but merely a tenant at will (*o*). Until he has done some act to acknowledge a tenancy from year to year no rent is due for occupation, but only compensation "in the nature of rent;" and, as there is no actual demise at a fixed rent, the landlord cannot distrain for non-payment (*p*). Immediately, however, the tenant has paid rent, or has done any other act which implies a yearly tenancy, and fixes the amount of rent to be paid, the law presumes a tenancy from year to year in accordance with the terms of the agreement.

It is advisable, therefore, that the agreement contain a proviso that until the lease be executed the tenant shall hold as tenant from year to year, under the rent, covenants, and provisions comprised in the contract, and from a day named.

In *Bicknell v. Hood* (*q*) there was a clause in the agreement, that "until such lease shall have been granted as aforesaid it shall be lawful for the said W. L., &c., to distrain for all or any part of the rent which may become due from the said W. H., in respect of the premises hereby agreed to be demised, at any time after the execution of this agreement." It was held that this clause did not render the agreement a present demise.

It appears now, however, to be settled law that the terms of a tenancy from year to year are to be read in the agreement for a lease; the principle probably being, although I do not find it so laid down in words in any of the cases (*r*), that the agreement is evidence of the terms and conditions of a parol lease from year to year.

In the case of *Doe d. Bromfield v. Smith* (*s*), the agreement was as follows: "3rd March, 1778, agreed this day to

(*o*) See *ante*, p. 17.

(*p*) *Dunk v. Hunter*, 5 B. & Al. 322.

(*q*) 5 M. & W. 104.

(*r*) See *Tempest v. Rawling*, 13 East, 18.

(*s*) 6 East, 530 (1805).



let to Mr. Smith my house situate in the Wardwicke, Derby, at the yearly rent of thirty guineas, he paying the taxes ; also an inclosure called the Gallows Intack at the yearly rent of 7*l*. The above agreement to continue during my life supposing it to be occupied by himself or a tenant agreeable to me. A clause to be added to the lease to give my son a power to take the house for himself, if he chooses, when he comes of age." Smith entered under this agreement, and died in 1803. The landlord brought ejectment against the executor without giving notice to quit. Here, if the tenant was simply tenant from year to year, the executor was entitled to a notice to quit ; but if the tenant held under the conditions of the agreement his tenancy ceased at his death, because the occupation by himself was a condition of the tenancy. Per Lord Ellenborough, C. J.—“ Those I consider as words of condition, requiring Smith either personally to occupy the premises, or that *he* should occupy them by some other tenant agreeable to the landlord ; still regarding it however as in effect the occupation of Smith himself. His interest therefore ended with his life, and as he continued in possession to the last upon the terms of the agreement, we cannot refer his possession to any other title ; and consequently the ejectment was well brought upon his death, without giving his executrix any notice to quit.”

In the following year, in the case of *Doe d. Oldershaw v. Breach*, the decision in *Doe d. Bromfield v. Smith (t)*, was followed at nisi prius by L. C. B. Macdonald. Here an agreement for a lease specified what covenants were to be inserted in the lease ; such as to pay rent, not to underlet, not to take three successive crops, not to cut trees, &c. &c. ; with a right of re-entry for a breach of any of them. The ejectment was brought after breach.

In this case, the objection was taken that there could only be a forfeiture of a real estate by reason of a covenant, whereas the defendant had not bound himself by deed to the performance of any covenant.

Lord Chief Baron Macdonald observed, “ that had it not been for the authority cited of *Doe d. Bromfield v. Smith* he should have thought the objection a good one, the action of ejectment

(t) 6 Esp. 106.

being to recover a legal estate ; but that, according to the abstract of the case as shown to him, he must consider it as decided upon the broad principle, that a tenant in possession by virtue of an agreement for a lease must be considered as holding from year to year under the conditions and upon the terms contained in the agreement, and subject to all the legal consequences of holding under such terms. Though the case of *Doe v. Smith* applied to the determination of the term only, that was the important part in every demise for a term of years, and if that was held to be governed by the terms of the agreement, the agreement must be equally operative as to all the other circumstances of the demise." The plaintiff was afterwards nonsuited on the merits, so that the point was never moved.

In the more recent case of *Doe d. Thompson v. Amery* (u), the agreement provided that the lease should contain certain farming covenants, which were set out ; among others that the tenant should not grow two successive crops of white corn or grain without summer tilthing or taking a green fallow crop. Notice of breaches was served and ejectment brought, and at the trial the breach of the covenant above mentioned was proved. Upon the ruling of Tindal, C. J., the plaintiff had a verdict, with leave reserved to move to enter a nonsuit.

Lord Denman, C. J., in discharging this rule, said, " In this case the defendant was let into possession under an agreement which gave the parties a right to go into equity to compel the execution of it, by making out a formal lease. Under such circumstances it has long been the uniform opinion of Westminster Hall, that the tenant in possession holds upon the terms of the intended lease. One of these terms was that the lessee should not take successive crops of corn, and that the lessor should have power to re-enter on the breach of such agreement. This agreement and proviso apply to the yearly tenancy of the defendant. It has been argued that the terms of the lease cannot be applied to the parol tenancy, inasmuch as some of them, such as the agreement for repairs, are not usually considered as applicable to such tenancy. Whether the obligation to repair can be enforced under such circum-

(u) 12 Ad. & E. 476.

stances, at least as to substantial repairs, may perhaps be questionable ; but at all events the agreement as to cropping the land is one which is consistent with a yearly tenancy (x)."

It follows, that if the agreement provide that the lease shall contain a proviso for re-entry in case of breach of covenants, the tenant may be ejected without notice to quit, if he shall do anything that would have amounted to a breach of a covenant if the lease had been executed ; or the landlord may distrain for any penalty rents mentioned in the agreement ; or may recover for any breach of the culture stipulations (y). Or, if the agreement should be for a specified time, and not from year to year, may eject the tenant without notice at the end of the term (z).

A verbal agreement between landlord and tenant, holding under an agreement for a lease that the rent shall be reduced, which reduction is made, and the rent paid in accordance with it, does not determine the existing tenancy and create a new tenancy from year to year. Such an agreement does but confirm the existing agreement, with a relaxation of one of its terms (a).

An agreement for a lease cannot however inchoate a larger legal interest than that of a tenancy from year to year. Lord Mansfield, indeed, deemed an agreement for a lease equivalent to a lease actually granted, and held it to be a good defence to an action of ejectment brought within the term (b). Subsequent decisions however have corrected this innovation upon

(x) *Doe d. Thompson v. Amery*, 12 Ad. & E. 476. In the very recent case of *Arden v. Sullivan*, 19 L. J., Q. B., 268, a dictum of Mr. Justice Erle occurs, bearing upon the latter part of Lord Denman's judgment above cited. That learned judge is reported to have said, "I believe the law is that a party holding under a lease void for non-compliance with the Statute of Frauds, holds under such only of the terms as are applicable to a tenancy from year to year. If the contract to put in repair is not imported into the implied contract, the defendant is only liable to do such repairs as are applicable to a

yearly tenancy." The judgment of the Court however was, that the landlord was entitled to recover damages for non-repair under the terms of the agreement.

(y) *Doe d. Oldershaw v. Breach*, 6 Esp. 107 ; *Hamerton v. Stead*, 3 B. & C. 478 ; *S. C.* 5 D. & R. 206 ; *Mann v. Lovejoy*, 1 Ry. & Moo. 355 ; *Brydges v. Lewis*, 3 Q. B. R. 603.

(z) *Doe d. Tilt v. Stratton*, 4 Bing. 446 ; *S. C.* 1 M. & P. 183.

(a) *Clarke v. Moore*, 1 J. & Lat. 723.

(b) *Weakly d. Yea v. Bucknell*, Cowp. 473 ; *Goodtitle d. Edwards v. Bailey*, Cowp. 597.

ancient principles, and it is now quite settled law, that an agreement for a lease is of itself no defence to an action of ejectment (c).

*Who are bound by the Agreement.*—As the landlord, whether he let by parol, by writing, or by deed, cannot grant any greater interest than he himself has, it is plain that if he be only tenant for life without any special power, he cannot (unless in some exceptional cases, which it is beyond our province to discuss,) secure the tenant in any enjoyment of the farm, or the right to take any fixtures or crops, (other than emblements or well-established customary outgoing crops,) or to have any allowances for tillage, drainage, or other improvements, after the end of his own estate (d). The remainderman will not be bound by the written terms of tenancy. The personal representatives of the original landlord (the tenant for life) would be liable upon the stipulations of the agreement; but one of these two inconveniences would arise: either the personal property of the original landlord will be consumed in the buying up tenant rights; or if, as is not uncommon, the landlord leaves little or no personal property, the tenant will lose his money.

How far these inconveniences will occur in practice it is impossible to estimate. Tenant right in Yorkshire is a custom; tillages and half-tillages have been established for a period sufficient to attach them to the land: but in most other parts of the kingdom they are new. It is impossible therefore to say, that in the present state of the law the tenant is quite safe in laying out his money in permanent improvements, even upon a tenant-right agreement.

To remedy this defect a bill has already twice passed the House of Commons, but has been on both occasions thrown out by the Lords. Its object was to render it lawful for the owner for the time being, of any farm in England or Ireland, to enter into agreements with the tenant thereof, entitling such tenant in all cases, except the determination of the tenancy by forfei-

(c) *Doe v. Staple*, 2 T. R. 684, 739; *Goodtitle v. Jones*, 7 T. R. 47; and see 8 T. R. 2; *Shannon v. Bradstreet*, 1 Sch. & Lef. 67.

(d) The subject of tenant right

will be hereafter more fully treated, when I come to consider the form of the agreement in its respective parts.

ture, (which appears to be a most inexpedient exception,) to receive from the incoming tenant, on behalf of the landlord, or from the landlord, compensation for any outlay effectually and properly incurred by the tenant after the passing of the Act.

This bill treats improvements as either temporary or durable ; and describes the former, as such manures, and articles of food for cattle, sheep, or pigs, as shall be specially mentioned in the agreement—the latter, as draining, marling, chalking, claying, or otherwise amending the soil of the farm, works of irrigation, and construction of new fences.

With respect to these improvements, the bill proposed certain rules for estimating the compensation, in the case of a general agreement, that the tenant shall have a tenant right according to statute ; and contained a power to the owner for the time being to grant a tenant right by special agreement, not extending beyond twelve years.

This part of the law is certainly not at present consistent with the progress of agriculture ; but it has been feared that tenants for life might abuse the power which Mr. Pusey's bill proposed to give them. The scheme seems to require the intervention of some public authority.

Tenants for life have received certain powers of expending money in drainage upon their estates. The subject does not fall within the scope of a work upon agricultural tenancies ; but it may be useful to remark, that the power is given by the "Private Money Drainage Act," (12 & 13 Vict. c. 100,) and that the working of the Act is placed under the jurisdiction of the Inclosure Commission.

By this Act, after application made, notices given, and inspection of the land by the officer of the commission, any person in the actual possession or receipt of the rents or profits of any lands (except any tenant for life or lives, or for years holding under a lease or agreement for a lease on which a rent of not less than two thirds of the clear yearly value of the premises comprised therein shall have been reserved, and except any tenant for years whatsoever, holding under a lease or agreement for a lease for a term which shall not have exceeded fourteen years from the commencement thereof,) may borrow or advance money for drainage, and charge the same on the inheritance. Upon the commissioners being satisfied

of the due execution of the work they grant a rent-charge for twenty-two years, indefeasible in title, and chargeable upon the land prior to all other charges, except tithe rent-charges, chief rents, and taxes.

Public money may also be obtained by way of loan, for the purpose of draining and improving lands. Several Acts have provided funds for this purpose, which have been immediately absorbed; and the statute 13 & 14 Vict. c. 31, directs a further advance of two millions for Great Britain, and 200,000*l.* for Ireland. The working of the act is also under the control of the Inclosure Commission.

### 3.—*Tenancies from year to year under lease.*

The nature of a tenancy from year to year, under a lease, will vary in no important particular, as to its legal rights and obligations, from a tenancy under a lease for years. We shall however treat sufficiently upon this subject in the immediately succeeding chapter.

## CHAPTER VI.

OF THE INSTRUMENTS OF LETTING FROM YEAR  
TO YEAR.

Generally.

§ 1. *Of the Parties.*§ 2. *Of the Parcels.*§ 3. *Exceptions and Reservations.*

Trees.—Soil and Turf.—Water.—Right of Way.—Game.—General Observations.

§ 4. *Of the Habendum.*

Generally.—Michaelmas Entry.—Lady-day Entry.

§ 5. *Of the Reddendum.*

Generally.—Demand of Rent.—Arrears.—Nature of Rent reserved.—Metayer System.—Grain and produce Rents.—Valuations for Rent.—Additional Rents.

§ 6. *Of the Covenants by the Tenant.*

a. To pay Rent and Taxes.

b. Against Waste.

c. To repair.

d. To insure.

e. Against converting old Turf.

f. To protect Trees.

g. To make all Incoming Payments.

h. General Covenants to Cultivation in a husbandlike Manner.

i. Particular Covenants as to Culture.—General View of Farm Produce.—Rotation of Crops.—Sale of Hay and Straw.—Manure.—Two-field Course.—Four-field Course.—Five-field Course.—Six-field Course.—As to Expediency of prescribing the Rotations of Crops.—Other Provisions against exhausting the Land.

j. Against exhausting and injurious Plants.

k. As to Culture after Notice to Quit given.

l. Against assigning or underletting.

m. To quit at End of Term.

n. Construction of Tenant's Covenants.

§ 7. *Of the Covenants by the Landlord.*

a. Covenants for quiet Enjoyment.

b. To allow Tenant a Pre-entry to plough.

c. Outgoing Allowances.—General View of Tenant Right.—Permanent Improvements.

§ 8. *Of the Mutual Covenants.*

- a. To refer Differences to Arbitration.
- b. For estimating Value of Outgoer's Interest.

§ 9. *Of the Provisoes and Conditions.*

- a. Against the Operation of the Custom of the Country.
- b. For Resumption of Land.
- c. Agreement not to operate as a present Demise.
- d. For Re-entry.—For Non-payment of Rent.—Demand of Rent.—Statute.—Relief in Equity.—Statute.—For Breach of Covenants.—In what Cases Equity will relieve.—Notice of Breaches.—For Bankruptcy, Insolvency, &c.—Statute.—Outgoing Allowances, how affected by Re-entry.—Of the Proviso generally.—Cases upon the Construction of special Proviso for Re-entry without Action of Ejectment.
- e. Waiver of Forfeiture under Provisoes.

§ 10. *Signature.*

Proposals.—Agreements.—Leases.

## GENERALLY.

HAVING in the preceding chapter stated the operation of the various written instruments by which a tenancy from year to year is created and governed, we shall proceed to set forth the most practically important of the rules of law and the requirements of good husbandry, which apply to the form and construction of these instruments.

In framing an agreement it would probably be safer if the provisions were all set forth with the particularity of a lease for years. But as this would in a great measure defeat the only object of adopting an agreement instead of a lease, namely, the saving expense, it is more usual to state the stipulations in the most concise form of words possible. This method has the advantage of giving the tenant a rule of conduct which he can understand; and the Courts have in some cases been inclined to construe such concise stipulations as representing the covenants which equity would have compelled, had a suit for specific performance been brought upon the agreement (*a*). But, however concise may be the language of the instrument, it should always contain all the conditions of the tenancy. It would be better to rely upon the general law and the custom of the country, than to stipulate by the agreement, that the lease shall contain "all useful covenants," or

(a) See *Doe d. Bromfield v. Smith*, 6 East, 530.



"the ordinary covenants in farming leases in the neighbourhood," or the like.

Whatever may be the form of the instrument, whether a lease from year to year—or an agreement for such a lease—or a proposal for the terms of a parol lease—it must either fully set forth, or concisely agree for, all the stipulations of a lease. There is therefore little real distinction between discussing the stipulations of the agreement for a lease and treating of the various parts of the lease itself.

### SECT. 1.—*Of the Parties.*

The description of the parties should include their christian and surnames, their places of abode (particularizing the street, town and county, or the village, parish, and county) and their title, profession, or trade. But although these particulars should never be knowingly omitted or erroneously stated, yet absolute correctness is not in ordinary cases important: any description is sufficient which clearly distinguishes the party from all others (*b*).

An agreement may be enforced, even although it has not the signature of the party who claims under it. But when the person claiming under a lease was no party to the lease, as where it had been executed by his agent in his own name, the principal cannot support an action of covenant against the lessee, unless the indenture be executed after the 1st October, 1845, in which case the benefit of a condition or covenant respecting any tenements or hereditaments may be taken, although the taker thereof be not named a party to the same indenture (*c*).

When the agreement is made by the agent of the landlord, the landlord should be the party named, and the execution should be in his name, in order to be binding upon him (*d*). But it matters not in what form of words such execution is denoted by the signature of the name, as if it be written "for J. B. (the principal), M. W." or otherwise (*e*). The agent executing the agreement should produce his power of

(*b*) Shep. Touch. 233.

R. 102; 5 B. & C. 355.

(*c*) Stat. 8 & 9 Vict. c. 106, s. 5.

(*e*) *Wilks v. Buck*, 2 East, 162.

(*d*) *Berkeley v. Hardy*, 8 D. &

attorney (*f*) : and if the agreement be under seal, the power of attorney must be under seal also. In one case, where a deed was produced purporting to bind a trading company, it was held that proof that the person executing it was their general law agent was *primâ facie* sufficient without showing that he was authorized to execute the particular deed (*g*). But in all cases, especially in cases of agreement which will bind the landlord to outgoing allowances, the agent should show his authority. It is not in all cases necessary, but it is in all cases much safer (*h*).

## SECT. 2.—Of the Parcels.

The farm should be described with reasonable accuracy. If its identity can be perfectly established by stating the name of the farm, the parish, and the county, all other particulars should be omitted. The accumulation of description upon description, and the introduction of minute circumstances of boundary, acreage, and occupation, often operates only to create doubts, and to qualify the words of general description.

But the parish and the county should be stated correctly ; for if a lease be made of all houses, mills, &c., in parish A., a mill in parish B. will not pass ; although both mills may be under one roof (*i*). But if the farm is described as being situate in parishes A. and B., it is not necessary that it should be in both. It is sufficient if it lie in one of these parishes (*k*).

It is usual and not improper to state the farm to be in the occupation of the outgoing tenant. But, before such a description is inserted, the parties should be certain that the incomer is to take precisely the farm which the outgoer leaves. Thus, where a lease was made of a messuage and two-yard land, in the possession of A., no more of the two-yard land was held to pass than was in A.'s possession, although land not in

(*f*) *Johnson v. Maron*, 1 Esp. 89.

(*g*) *Doe d. M'Leod v. E. W. Company*, Moo. & M. 149.

(*h*) See *Fenn v. Harrison*, 3 T. R. 757 ; *Cornfoot v. Fowke*, 6 M.

& W. 358.

(*i*) *Hall v. Combs*, Cro. Eliz. 368 ; *Doddington's case*, 2 Rep. 32 b ; *Hall v. Peart*, Poph. 60.

(*k*) *Clayt.* 123, pl. 218.

A's possession had for time out of mind been parcel of the two-yard land (*l*).

In *Doe d. Smith v. Galloway* (*m*) the rule was laid down by Park, J., to be, that where there is a sufficient description set forth of the premises by giving the particular name of a close or otherwise, a false denomination may be rejected; but when the premises are described in general terms, and a particular description is added, the latter controls the former.

If the farm is not perfectly well known by its general name, or if the holding has been recently varied, it will be well to describe it by reference to a schedule, or by reference to the Tithe Commutation map.

The general words added to the premises in formal leases are, usually, "all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised belonging or in any wise appertaining;" and the words, "or therewith used or enjoyed," are sometimes, and not injudiciously added (*n*).

"Appurtenances" is a very comprehensive word, and will pass rights of common appurtenant, (which however would pass without any other words than the description of the land or house to which it is appurtenant,) a sheep walk, a curtilage, or a garden. It has been said that even lands, usually occupied with the house for the same rent (*o*), will pass under this word: but the better opinion seems to be that land will not pass as an appurtenance (*p*).

The demise of the use of a pump "while the same shall remain there" does not prevent the landlord removing it, how-

(*l*) *Bartlett v. Wright*, Cro. Eliz. 299.

(*m*) 3 B. & Ad. 43; and see *Taylor v. Parry*, 1 Sco. N. R. 576; S. C. 1 M. & G. 604.

(*n*) *Barlow v. Rhodes*, 1 C. & M. 439; *Hinchcliffe v. Earl Kin-noul*, 5 Bing. N. S. 1.

(*o*) *Solme v. Bullock*, 3 Lev. 165; *Hurlston v. Woodruffe*, Cro. Jac. 519; *Bettisworth's case*, 2 Rep. 32 a; Cary, 24; *Smith v. Martin*, 2 Saund. 400.

(*p*) *Bryan v. Wetherhead*, Cro. Car. 17; *Wilmore v. Cain*, Cro. Eliz. 918.

ever capricious and inconvenient the exercise of his option may be (*q*).

The demise of the free use of an intended road will not include the use of a road which was being made when the negotiation for the tenancy commenced, but was completed before its actual commencement (*r*).

Attention should be given that the premises do not expressly include any of the matters afterwards reserved, for the grant will override the reservation (*s*).

This selection from the cases decided upon the description of the premises will be sufficient to exemplify the necessity of certainty in the setting forth the subject-matter of the agreement.

### SECT. 3.—*Exceptions and Reservations.*

An exception is a carving out of something *in esse* which would pass to the tenant by the general terms of a demise without some words of restriction (*t*), as all timber trees, mines, quarries, and the like (*u*).

A reservation is a creation for the use of the landlord of some right upon the premises, such as a right of way, a profit à prendre, a right of entry to cut and carry away timber, a right of sporting, &c. (*x*).

*Exceptions.—Trees.*—An exception of woods, underwoods, coppins, and hedgerows, comprises the soil itself on which they grow (*y*). But the soil is only excepted so long as the tree remains (*z*). And if the words appear not to except the words from the demise, but rather to reserve a right to

(*q*) *Rhodes v. Bullard*, 7 East, 116; *Pomfret v. Ricroft*, 1 Saund. 321.

(*r*) *Crisp v. Price*, 5 Taunt. 548.

(*s*) *Stukely v. Butler*, Hob. 170; *Cudlip v. Rundel*, Holt, 40; 4 Mod. 9; 12 Mod. 14; *Miller v. Pratt*, 3 Dyer, 264 b.

(*t*) *Bullen v. Denning*, 5 B. & C. 842.

(*u*) *Earl of Cardigan v. Armi-*

*tage*, 2 B. & C. 197; *Doe d. Douglas v. Lock*, 2 Ad. & E. 705; and see *Hebbert v. Thomas*, 1 C. M. & R. 861.

(*x*) *The Durham R. C. v. Walker*, 2 Q. B. R. 940.

(*y*) *Legh v. Heald*, 1 B. & Ad. 622.

(*z*) *Whistler v. Parslowe*, Cro. Jac. 487.

enter, and cut and carry timber there, the soil is not excepted (a).

An exception of great trees extends to trees which become great during the lease; but, unless timber trees be excepted, they are included in a general demise of the lands on which they grew (b).

Where there was an exception of all timber trees and other trees, but not the annual fruit thereof, it was held that apple trees were not within the exception (c).

Trees should always be excepted, and not merely a right to enter and fell and carry reserved, for the tenant's right to cut timber for house bote, plough bote &c., is thereby defeated, and such a right, if not exercised under the absolute control of the landlord, is a very dangerous power in the hands of a mischievous tenant.

But although timber trees are included in a general demise, yet cutting down, destroying, or topping off all trees which are timber (and timber-trees are not only oak, ash, and elm, but also all trees which by the general custom of the country are used for permanent building purposes) is waste; so is any act which has the effect of causing a decay of the wood.

In the case of a tenant from year to year, however, there is no property in any trees in the tenant. All trees remain the property of the landlord (d), unless they be coppice woods, which form part of the profits of the farm (e), in which case they must be cut and managed like any other portion of the farm according to the rules of good husbandry and the custom of the country.

*Soil and Turf.*—The reservation of pits, with ingress to cut and carry away peat and turf, was held to be an exception from the demise and not a reservation (f). So, where a lease excepted all royalties, minerals, fullers' earth, clay for bricks and earthenware, coal-pits, quarries, lime, slate, or stone, and

(a) *Legh v. Heald*, *supra*; and see *Jenney v. Brook*, 6 Q. B. R. 333.

(b) *Doe d. Douglas v. Lock*, 2 Ad. & E. 705; 4 N. & M. 807; *Gamock v. Cliff*, 1 Leon. 61.

(c) *Bullen v. Denning*, 5 B. & C.

842.

(d) *Wyndham v. Way*, 4 Taunt. 316.

(e) *Berriman v. Peacock*, 9 Bing. 385; 2 Moo. & S. 524.

(f) *Fancy v. Scott*, 2 M. & Ryl. 235.

bogs or turf mosses whatsoever, together with all woods, &c., with ingress, egress, and regress to dig for, fell, and carry away the excepted premises, and liberty for the lessor to fowl, hunt, and hawk in and upon the premises, *saving* always out of this exception liberty to the lessee to dig out and take lime, slate or other stone, and turf moss, to be spent and employed upon the premises; it was held that the words bogs and turf mosses did not pass a mere right to the landlord, but excepted the soil itself; and that in such of the lands as were not bogs the tenant had not the soil but only a right of turbary (*g*).

*Water*.—Where there was a demise of a mill and a stream of water, except so much of the water as should be sufficient for the supply of persons whom the lessor had already contracted with or thereafter should contract to supply, provided that such a quantity should be left as should be sufficient to supply the mill for twelve hours a day, it was held that this was not an absolute undertaking to supply the mill with water for twelve hours a day, but only a demise of the mill as the water was flowing at the time of the demise (*h*).

The effect of an exception is to except all things dependent on it and necessary for its enjoyment (*i*). Therefore, if the landlord except the wood, he may justify an entry to fell and carry it away (*k*); and, on the other hand, the exception may not hinder the enjoyment of the thing demised. As, where certain closes were excepted from a lease which the lessee was not to use, yet it was held that he might pass and repass through them, if he could not otherwise have the complete enjoyment of the lands demised to him (*l*).

Where the words of an exception are ambiguous, they will be construed in favour of the tenant; for the words are the words of the landlord (*m*).

*Right of Way*.—A right of way must be expressly reserved if the landlord intend to retain it (*n*).

(*g*) *Boyle v. Oliphants*, 1 Longf. & Towns. 321; S. C. 4 Irish Eq. R. 241.

(*h*) *Blatchford v. Plymouth (Mayor)*, 4 Sco. 429; 3 Hodges, 86; 3 Bing. N. C. 691.

(*i*) *Durham R. C. v. Walker*, 2 Q. B. R. 940.

(*k*) *Earl of Cardigan v. Armistage*, 2 B. & C. 207; *Anon.* 2 Mod 317.

(*l*) 11 Rep. 52 a.

(*m*) *Shep. Touch.* 100; 2 B. & C. 206; 5 B. & C. 842.

(*n*) *Good v. Hill*, 2 Esp. 698.

A reservation of a right of way on foot, and for horses, oxen, cattle, and sheep, does not give any right of way to lead manure, which implies drawing in a carriage (*o*).

Where a lessor excepted two rooms and free passage, &c., and the free passage was disturbed, this was held to be an injury to the reservation and not to the exception, and therefore the action was rightly brought in covenant and not in trespass (*p*).

It is also usual to reserve a right to retake any portion of the lands that the landlord may require for his own purposes. But this reservation should be in some respect restricted, otherwise the landlord may use the power to determine the lease or the tenancy (*q*).

*Game*.—A reservation by a grantor of lands for himself and his heirs of liberty to come on the lands to hawk, hunt, fish, and fowl, has been held in a recent case to be not strictly a reservation or an exception, but a new grant by the grantee to the grantor, and that therefore it might enure to the original grantor and his heirs (*r*).

The same case has decided that the grant to a person, his heirs and assigns, of free liberty, with servants or otherwise, to come into and upon the lands and there to hawk, hunt, fish, and fowl, is a grant of a license of profit and not of a mere personal license of pleasure, and therefore it authorizes the grantee, his heirs and assigns, to hawk, hunt, fish, and fowl, by his servants in his absence, and also that such a liberty is a profit à *prendre* within the Prescription Act, 2 & 3 Will. IV. c. 71, s. 2.

An exception in a conveyance, made in 1655, of the free liberty of hawking and hunting does not include the liberty of shooting feathered game with a gun. Gibbs, C. J., in delivering the judgment of the Court said: "If one were to give leave to another to hunt over their premises, it would not give him the liberty of shooting there; and many would give another liberty of hunting over their premises who would be extremely annoyed if he went shooting there (*s*).

(*o*) *Bruntton v. Hall*, 1 Q. B. R. sec. 9 of this chapter.

792.

(*r*) *Wickham v. Hawker*, 7 M. &

(*p*) *Bush v. Cole*, 12 Mod. 24.

W. 63.

(*q*) See *Doe d. Gardner v. Ken-*  
*nard*, 12 Jur. 821, Q. B.; and *post*,

(*s*) *Moore v. Lord Plymouth*, 7  
Taunt. 614.

It is clear, however, that game cannot be *excepted* from a demise (*t*), and therefore it is more regular to render it the subject of covenant. In fact, all reservations should be postponed, for the covenants and provisoes and the exceptions only should be mentioned in the parcels. Practically, however, this distinction is not frequently of importance; and it is usual to reserve the right of sporting, and also to insert a covenant to secure the full enjoyment. The reservation however, if it occur in a deed, is in itself a covenant or a grant (*u*).

Before the passing of the Statute 1 & 2 Will. IV. c. 32, the right of sporting upon land was, in the absence of any special stipulation, in the tenant and not in the landlord (*x*), subject, of course, to the general qualification laws then existing.

The provisions of that Statute enact, that upon land held under lease or agreement made before 1st October, 1831, unless the lease be for more than twenty-one years, or granted upon a fine paid, or unless the right of sporting was expressly mentioned, the landlord may sport, or authorize others to sport, while the tenant, if he do either, subjects himself to a penalty not exceeding 2*l.* for the sporting, and 1*l.* per head for the game killed, together with the costs of conviction; and, in default of payment, to imprisonment.

Where the right of killing the game was by the lease or agreement expressly given to the tenant, the relative rights of landlord and tenant appear to be unaltered by the Act, except indeed upon the supposition that such lease or agreement expressed that both landlord and tenant should have the right of killing the game; for then, the 11th section, which provides, that the landlord who has by reservation the right to kill the game may authorize others to do so, and the 30th section, which provides, that where the landlord has the right

(*t*) *Doe d. Douglas v. Lock*, 2 Ad. & E. 743.

(*u*) "Any words in a deed which show an agreement to do a thing make a covenant," Com. Dig. Covenant (A, 2). If the exception operate as a grant it can only be valid in a lease under seal, for the right of sporting is an incorporeal hereditament, which can only pass

by deed; see *Bird v. Higginson*, 2 Ad. & E. 696; and *S. C.* in error, 6 Ad. & E. 824. The same observation will of course apply to a right of way or any other incorporeal hereditament.

(*x*) Year Book, 14 H. VIII. 1; *Moore v. Earl of Plymouth*, 1 Moo. 346; *Doe v. Lock*, 2 Ad. & E. 743.



to kill the game the tenant's licence shall be no defence to a trespasser under that section, may materially affect those rights.

In the other excepted cases—viz., where a fine was paid at the grant or renewal of the lease, and where the term granted exceeding twenty-one years, *and in all leases made after 1st October, 1831*—the relative right of landlord and tenant appears to be unaltered, except in the following respects:—1st. When the landlord has the exclusive right of sporting, he has, under the 12th section, a new and summary remedy against the tenant who sports or authorizes others to sport. This section enacts, that where the right of killing the game upon any land is by the Act given to any lessor or landlord in exclusion of the right of the occupier of such land, or where such exclusive right hath been or shall be specially reserved by or granted to, or doth or shall belong to, the lessor, landlord, or any person whatsoever other than the occupier of such land, then and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord, or other person having the right of killing the game upon such land, such occupier shall on conviction thereof before two justices of the peace forfeit and pay for such pursuit such sum of money not exceeding 2*l.*, and for every head of game so killed or taken such sum of money not exceeding 1*l.*, as to the convicting justices shall seem meet, together with the costs of the conviction. 2nd. When the landlord has by reservation the right of killing the game, he may, under section 11, authorize others so to do; and the tenant's license would in such case be no defence to a person prosecuted by the landlord for a trespass in pursuit of game under section 30.

It may be observed that sect. 7 refers only to game; the landlord's and tenant's rights in respect of woodcocks, snipes, quails, landrails, and conies, are therefore unaltered by this section: but it is provided by the 30th section that where the landlord has the right of killing the game the leave and license of the occupier shall be no defence to a person prosecuted under that section by the landlord, for a trespass in pursuit of game, or woodcocks, snipes, quails, landrails, or conies; so

that, although the tenant may kill these animals, and without danger to himself give leave to a stranger to do so, the stranger acting on such leave will be liable to a penalty, and in default of payment to imprisonment.

The 11 & 12 Vict. c. 29, s. 6, enacts, That when any tenant of any land for life or lives, years, or otherwise, now is or hereafter shall be bound by any agreement not to take, kill, or destroy any game upon any lands included in such agreement, then, and in all such cases, nothing therein contained shall extend, or be taken or construed to extend, to authorize or empower such tenant to take, kill, or destroy any hare upon any such lands so included in such agreement, or to authorize any other person to kill or destroy any hare upon any such lands (y).

When the lessor has the freehold, the exception, reservation, &c., should be to him, his heirs and assigns; the words executors and administrators are superfluous, for they are his assigns in law. If, however, the lessor is himself only a lessee for years, the exceptions should be to him, his executors, administrators, and assigns.

As to the agricultural objects and expediciencies of these reservations, I shall quote Professor Low:—

“The reservation to the landlord of certain rights of property is usually made the subject of a series of conditions. The rights commonly reserved are:

“1. Workable minerals, such as metals, coal, limestone. These not being understood to be paid for by a tenant, the power to work them is properly reserved; the tenant, however, receiving compensation for any loss or injury he may sustain by works. As the damage cannot be ascertained at the time of the contract, it is necessary that this and similar questions be determined by arbitrators mutually named, generally two, who are empowered or enjoined to appoint an umpire in case of their differing in opinion.

“2. Growing wood of whatever kind, with the necessary provisions for pruning and felling the trees, and carrying away the produce; and likewise the woodland, where that is enclosed or not understood to be let to the tenant for pasturage or other uses.

(y) Locke on the Game Laws, p. 15.

"3. The power to resume a given quantity of ground for planting at any time during the lease. In reserving this right the quantity of ground ought to be fixed, for otherwise the tenant might be injured by too large a part of his farm being taken from him. The tenant must receive compensation for the land when resumed, either at a rate fixed by the lease, or at a rate to be determined by mutual referees at the time. It is sometimes well to lay down the principle on which this compensation shall be given, because instances have been known of referees taking very erroneous views of the question. The fair understanding is, that the landlord might reserve this land at once from the lease, and that he merely defers his power to do so to a future time. A principle fairly and commonly adopted is, that the tenant shall receive a deduction at the rate of one and a half year's rent of the yearly value at the time of the land resumed. The principle upon which he receives fifty per cent. more than the actual rent or value is, that he may be compensated for the inconveniencies which he may sustain by land being taken from him during the currency of his lease, without his being able to reduce the working establishment of his farm in the same degree. The landlord should be bound to enclose, in a sufficient manner, the land which he may resume, and to maintain the fences at his own expense during the remaining period of the lease.

"4. A right to the game upon the grounds with power to the landlord, or those having his authority, 'to hunt, course, fish, and fowl upon the lands.' This right is usually understood to be reserved at common law, but conveyancers in England generally think it proper to make the right the subject of an express provision. The right indeed, when improperly exercised, is annoying to tenants in a high degree; yet it were vain to hope that landlords will consent to limit their powers in the manner which the case requires. Little more can be done, therefore, than to entreat country gentlemen to use such rights with forbearance, and never to do an injury without feeling it to be their duty to make compensation to the sufferer. An incredible loss is sustained throughout the country by the multiplication of preserves, which, besides inducing idle and needy persons to commit breaches of

the law, tend too frequently to generate ill will between the landlord and those amongst whom he lives.

“5. Power to the landlord and those having authority ‘to enter the premises at all times, to see that the stipulations of the lease are complied with,’ and for other purposes mentioned. English conveyancers insert this condition to remove any doubt as to the powers given by common law. Its insertion is harmless, and cannot fairly be objected to by a tenant (a).”

Upon the Professor’s observations on the subject of game I would remark that I have seen many agreements in which the right to the game is not absolutely reserved. In some of these the landlord reserves the pheasants absolutely, and the partridges and hares till October, November, or December, as the case may be, giving the tenant a concurrent right after the date fixed, and a general right to destroy rabbits.

In other cases, the tenant is allowed a personal right of sporting on his farm; and in some few, where the landlord has cared more for the result than the sport, the tenant has a general concurrent right conditioned upon his supplying the landlord with an ascertained quantity of game.

The inquiries I have made tend to the conclusion that none of these contrivances work well in practice.—The allowance of a concurrent right, in the after part of the season, answers very well in tenancies from year to year; but would obviously not do in a lease for a term of years—the personal licence gives an uncompensated advantage to the sporting farmer, and is a cause of constant ill feeling, unless both landlord and tenant are very reasonable men—and the reservation of a quantity of dead game is open to very grave objections, and has no single advantage, now that game is an article of merchandise. These allowances may be very reasonable, and even expedient, where a landlord wishes to enjoy a fair amount of sporting over his land without any abatement of rent, and without being at great expense in preserving: but to effect this last object they must be indulgences that may be withdrawn, not stipulations which may be insisted on. Moreover, in the majority of cases, although there are many in-

stances to the contrary, a sporting farmer is not a first-rate agriculturist; his sport is certain not to lie in that part of his farm where his labourers and his teams are at work. The only safe course to pursue, in dealing with game in an agreement or a lease, is to reserve the game absolutely to the landlord, in which case of course the rent must be proportionably diminished; or to stipulate that no game shall be kept upon the farm, and that the eggs and young shall be sought out and destroyed.

The great practical evil of the present state of the game laws appears to be that there is no remedy given by the law for damage done by neighbouring preserves. There are instances of persons possessing only a track of woodland who keep up a large head of pheasants, hares, and rabbits, which devastate all their neighbours' surrounding fields. Such an inequitable practice might be effectually discouraged by giving a landowner a legal right to compensation, for damage done to crops by the game bred in a neighbouring preserve. This however is matter of consideration for the legislature, and not for the conveyancer.

#### SECT. 4.—*Of the Habendum.*

The habendum is a part of the formal lease which takes its name from the initial words "to have and to hold." It states the commencement and the duration of the term; and in leases from year to year, the formal words may well be dispensed with. In the late Act "for facilitating the granting of certain leases" (8 & 9 Vict. c. 124), the form given has no habendum.

In agreements, the words which limit the term and stand in the place of the habendum are usually, "upon the terms following, that is to say, tenant to be deemed tenant from year to year," or, after "agrees to take all," &c., "for one whole year, from the 25th day of March next, and so on from year to year until this agreement shall be determined by one of the said parties giving, in the first or any subsequent year to the other of them, three [or six, or nine, as the intention may be], calendar months' notice in writing for that purpose;" or, the lease to be from year to year, from Michaelmas day now next

ensuing. The tenant to enter on fallows at Lady-day, 1851; on the other lands, and the house and buildings (except the barns), at Michaelmas next; and on the barns, on the 1st May, 1852 (a): and to contain a clause that either party may determine the tenancy by a notice in writing of nine calendar months or upwards, expiring on the first or any subsequent Michaelmas-day after the commencement of the tenancy: and that the tenant shall quit in like manner as before expressed concerning his entry" (b).

An agreement to hold from year to year, and so on, as long as it shall please both parties, is a lease for two years, and after every subsequent year begun is not determinable till the end of that year (c). A demise for a year, and so from year to year, is a lease for two years certain at least. If a parson makes a lease for a year, and so from year to year so long as he shall continue parson, or so long as he shall live, this is a lease for two years at least if he live or continue parson so long (d). But if premises are taken for twelve months certain, and six months' notice to quit afterwards, the tenancy may be determined at the end of the first year by a six months' previous notice to quit (e). Lord Ellenborough, in this case, laid considerable stress upon the word certain applied to the first twelve months, which showed that everything afterwards was uncertain and depended on the notice.

Where the words of the agreement were "Tenancy to be from year to year from Michaelmas next," at the rent of 55*l.* payable half-yearly, "except the last half-year," and other provisions as to entry, to make fallows and carry out manure, were applied to "the last half-year," it was, in the recent case of *Doe d. Plumer v. Mainby* (f), held, that these stipulations did not necessarily import that the tenancy was to be extended beyond the first year, and that the tenancy was determined by a notice to quit expiring at the end of the first year. *Per* Denman, L. C. J.: "These stipulations only show what was contemplated by the parties as possible or probable, not any binding arrangement. Certain contingencies are provided for

(a) According to the custom of Berks and several other counties.

(b) See other forms, *post*.

(c) *Bellasis v. Burbrick*, Salk. 413; and see *Birch v. Wright*, 1

T. R. 380.

(d) Bac. Abr. tit. Leases.

(e) *Thompson v. Maberley*, 2 Camp. 572.

(f) 10 Q. B. 473.

in case the tenancy should last for more than one year. But the agreement does not therefore necessarily create a tenancy for more than one year."

The commencement of agricultural tenancies is a matter of great practical importance. Instances are to be found in almost every county of tenancies commencing at all the great (and even smaller) divisions of the year; and these again vary from the old style to the new. But the great majority of the farms throughout the kingdom are divided between Michaelmas and Lady-day holdings. It is greatly to be desired that even this distinction should cease, and that one period should obtain in every district. Whenever a farm let upon an unusual holding becomes vacant, both landlord and tenant are placed at the disadvantage of having to seek the one a tenant and the other a farm at a period of the year when there are no other farms vacant and no other tenants leaving.

The Michaelmas entry may be either on New Michaelmas-day, the 29th of September, or Old Michaelmas-day, the 11th of October, and the last is the better, as it allows the tenant more time to remove his crops (in some of the northern counties and in Scotland, where the harvest is later, Martinmas, the 11th November, is common). In all these entries the incomer finds the corn lands in stubble, and can do his own ploughing. He will however find seeds and turnips upon the light lands, and the fallows of the preceding summer upon the heavy lands; for all of which, and for some other operations he must pay.

The Lady-day entry is usually on New Lady-day, the 25th March. (In the north, Whitsunday, or Old May-day, the 13th May, are common spring entries.) The outgoer in the spring tenancy, has sown his wheat-lands, his turnips are out of the ground, and the land ready for the barley crop; and the wheat stubbles of the preceding year have been ploughed and manured for turnips. We are supposing a four-course system. If the outgoer performs all these operations, he must of course be paid for them. It is more usual, however, to provide that the incomer shall enter upon all the land under corn crops in the preceding year, so soon as these crops are removed from the ground. This will give him possession of all the stubble, (under the four-course system, one

from Lady-day, evidence was admitted to show that by the custom of the country a tenancy from Lady-day meant old Lady-day (*r*). If the reservation be "at the two usual feasts of the year," the law presumes these to be Michaelmas and Lady-day, and the payments will be presumed to be in equal portions, although this is not specially stated (*s*). And if a lease be made in August, reserving a yearly rent to be paid in moieties at Lady-day and Michaelmas, the first half-year's rent is due on the Michaelmas next succeeding, although Lady-day was the first specified day of payment (*t*). If the rent be reserved quarterly or half-yearly, each gale is a distinct debt (*u*). Where rent was reserved quarterly, or half-quarterly if required, and the landlord received the rent quarterly for the first twelve months, it was held that he could not without notice distrain for a half-quarter's rent (*x*).

The general rule is, that no payments or damages made or sustained by the tenant can be set off against a claim for rent due by the landlord, but this admits of certain exceptions (*y*), as in the case of ground rent, land tax (*z*), property tax (*a*), tithe rent-charge (*b*), rent-charges in lieu of manorial rights (*c*), or any payment due by the landlord, and in default whereof the tenant may be ousted of his possession (*d*).

Unless specially provided otherwise the rent is payable only on demand made *upon the land* (*e*). It is better therefore in all agreements upon estates of any magnitude, to insert words to oblige the tenant to pay the rent at the landlord's audit. The landlord may insist upon payment being made either to himself or his agent (*f*).

In the absence of express stipulations the rent will continue

(*r*) *Doe d. Hall v. Benson*, 4 B. & Al. 588.

(*s*) Com. Dig. tit. Rent, B, 8.

(*t*) Gilb. on Rents, 49, 51; *Hill v. Grange*, Plow. 171. See *Hutchins v. Scott*, 2 M. & W. 809.

(*u*) *Welby v. Phillips*, 2 Vern. 129.

(*x*) *Mallam v. Arden*, 10 Bing. 299; 3 M. & S. 763.

(*y*) *Doe v. Hare*, 2 C. & Mee. 145; *Carter v. Carter*, 2 M. & Pay. 732.

(*z*) By stat. 38 Geo. III. c. 5, s. 17.

(*a*) By stat. 5 & 6 Vict. c. 35, s. 60; Rule IV. 9.

(*b*) By stat. 6 & 7 Will. IV. c. 71, s. 80.

(*c*) By stat. 4 & 5 Vict. c. 35, s. 45.

(*d*) See Woodfall, L. and T. p. 299, 5th edit.

(*e*) *Boroughs' case*, 4 Co. 72 a; Cro. Eliz. 462; Mo. 404.

(*f*) *Drake v. Mitchell*, 3 East, 251. See post, tit. Provisoers. Sec. 9 of this chapter.



payable although the farm buildings be burnt down or otherwise destroyed, or even though the sea should wash away the land (g). Nor is there any obligation cast upon the landlord to rebuild (h), even although the landlord has insured, and has received the amount of the insurance (i).

*Arrears.*—By 21 Jac. I. c. 16, only six years' arrears of rent can be recovered or distrained for. But this statute does not apply to rent reserved by indenture, or actions of covenant (k). This provision is repeated and extended to money charged upon land by the 3 & 4 Will. IV. c. 27. By the Statute 3 & 4 Will. IV. c. 52, s. 3, actions of debt for rent upon indenture of demise must be brought within twenty years after cause of action accrued (l).

*Different kinds of Rent.*—Such are the most obviously practical points of law which apply to this portion of the agreement, but as it is the office of the reddendum to point out the nature of the rent reserved as well as to specify its amount, it will be proper that we consider the subject in this point of view.

The rent may be either fixed or fluctuating; but, if fluctuating, the fluctuation should depend only upon fluctuations in the market price of produce, and not upon fluctuations in the quantity of production. A simpler and more ancient form of rent, derived originally perhaps from the East, and still existing in Europe under the name of the Metayer System, is to divide the produce in determined portions between the landlord, the farmer, and the church. In this division the church usually takes one-tenth, the landlord three tenths, and the farmer the remaining six. An excellent and most equitable system, adapted to those early times, when to plough, to sow, and to reap, were the only operations of agriculture, when land was abundant, population scanty, and the natural fertility of the soil more than sufficient for the wants of those who lived upon it. Under this system, the farmer, if he can hope for no great

(g) *Monk v. Cooper*, 2 Ld. Raym. 1477; *Balfour v. Weston*, 1 T. R. 310; *Pindar v. Ainslie*, 1 T. R. 312, 710; *Paradine v. Jane*, Al. 27.

(h) *Brown v. Quilter*, 2 Ambl. 621; *Hare v. Groves*, 3 Anst. 693.

(i) *Leeds v. Cheetham*, 1 Sim. 146.

(k) *Freeman v. Stacey*, Hutt. 109.

(l) The cases decided upon these statutes are *Paget v. Foley*, 2 Bing. N. C. 679; 3 Scott, 120; *Strahan v. Thomas*, 12 Ad. & E. 536; *Grant v. Ellis*, 9 M. & W. 113; *Ex parte Jones*, 4 Yo. & Col. Ex. 466.

gain, can fear no actual want, and, raised little above the rank of a labourer, will probably be ignorant, listless, and contented. Part of the system has been in operation in England in our own day in the form of tithes. It will everywhere be found to yield the lowest rents, to induce the worst modes of agriculture, and to render the application of capital to working the soil impossible.

*Grain and Produce Rents.*—Any great permanent disturbance of the ordinary relative value of gold and farm produce, will of course disarrange all the calculations upon which the bargain between the landlord and the tenant was based. Corn rents are said to have had their origin in the sagacity of Lord Burleigh (*m*), who foresaw the effect which the importation into Europe of American gold would have upon long leases, based upon the then existing value of that metal. A similar disturbance is dreaded at the present day, but from a different cause. Many agriculturists expect that the repeal of the protective duties will decrease the value of farm produce, while the value of gold will remain at about its present standard. Much attention therefore has been given to the arrangement of a fluctuating rent, which shall compensate for this expected decrease.

There are two great objections to a rent based upon the market price of corn. The first is, that corn is only a portion of the produce of a farm; the price of stock being in many instances even more important to the farmer than the price of corn. The other is, that as the price of corn is affected by the quantity produced, the farmer would often have to pay the highest corn rent, when, from a failure in the quantity of his produce, he would obtain the least total return from his crop. A perfect fluctuating rent therefore should be calculated upon the price of all articles of farm produce, and also upon the quantity produced. But this would be to retrograde to the old metayer system, and to take from the farmer all incitement to enterprise.

The more practical advocates of grain rents have been satisfied to seek a scale of fluctuation which shall mitigate, without entirely correcting, any sudden change in the value of farm produce.

In Scotland, grain rents have long been in use. The practice

(*m*) See stat. 18 Eliz. c. 6; 2 Bl. Com. 322.

there of paying the minister's stipend in grain, or part grain and part money, dated as far back as 1617; and perhaps scarcely less ancient is the system by which a specified amount of barley or wheat was paid as rent, the bailiff or factor of the estate disposing of the produce, and the tenant being obliged to deliver it to the purchaser at the nearest market-town or port. A departure from this system to that of a fixed rent has not been approved by tenants in Scotland, who complained that even under the sliding scale the price of wheat varied from 35*s.* to 70*s.* a quarter, and that no farmer taking a farm could calculate on the price he would receive for his produce. A more modern system has been adopted by Lord Kinnaird and some other landowners in that part of the kingdom. The farm is valued as capable of producing on an average a certain number of bushels of wheat, barley, and oats per acre. One third of this is considered a fair amount of rent, and instead of the grain being handed over to the proprietor, the value is taken according to the Fairs prices (*n*), which are struck the end of February or the beginning of March. Upon some estates in Scotland from which I have been favoured with returns, the proportion of grain rent varies from twelve to eighteen bushels per acre, or about four bushels of wheat, six bushels of barley, and six bushels of oats. The prices are confined within a maximum and a minimum; the price of the sixteen bushels not to exceed 125*s.*, nor to fall below 60*s.*

This system has not been found to work so well in the highlands, because there the arable land is held in a great measure as subsidiary to the mountain districts, for growing turnips; and partly perhaps because the mode of ascertaining the fair prices has been thought to place the tenants in an unpleasant position with respect to their landlord. Upon many highland estates the price of wool has been used as the standard of rent.

(*n*) What are called the Fairs prices in Scotland are ascertained in the following manner:—A jury of tradesmen in the county town is empanelled about the end of February or the beginning of March, and the Court is presided over by three sheriffs or stipendiary magistrates, who summon a certain number of

corn-dealers, millers, bakers, distillers, maltsters, and farmers, who are obliged on oath to declare the prices at which they have either bought or sold grain of the last crop, and the different weights thereof, grain sold for seed being excluded. Both landlord and tenant may send in the names of any

In some parts of the north of Ireland, produce rents have been recently introduced; and I have been permitted by Mr. Sharman Crawford, to quote the terms upon which he now lets his farms in the County Down. I am not informed as to the degree of credit to be placed upon "Henderson's tables of prices" but in England great difficulty would be found in obtaining any trust-worthy return of produce averages in provincial markets.

Mr. Sharman Crawford's agreement refers first to certain reductions of rent determined upon for the year 1849, and then provides for future years, with regard to which (for a limited period mentioned in the agreement) it is agreed "that an annual revision of rent shall be made each year, further lowering the rents, if prices shall fall below the standard of the prices stated in the agreement as those for the year 1849, and raising them in like manner if prices shall rise above the said standards. And the prices shall be computed in manner following, that is to say, the mean prices of the several arti-

parties whom they may wish to be examined. The jury, after having heard the evidence, strikes the average; and in some counties, such as Perthshire, owing to the great difference in the descriptions of

land, it is taken at the first and second quality. The following list of Fiars prices in Perthshire for sixteen years will illustrate the above explanation, and show how the system works:—

#### FIARS PRICES.—1830 to 1846—Sterling Money.

The Fiars are per quarter for wheat, barley, oats, pease, rye—per boll of 140 lb. for oatmeal.

Crop.	Wheat, best sort.	Wheat, second sort.	Barley, best sort.	Barley, second sort.	Oats, best sort.	Oats, second sort.	Pease.	Rye.	Meal, by weight.	Meal, by measure.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
1830	56 7	51 7	30 5		24 7			29 10	22 8	18 3
1831	63 7	56 0	32 1	28 8	22 11			29 0		17 5
1832	55 8	50 8	27 1	27 1	19 6	16 0	22 9			14 6
1833	49 2	41 2	26 10	22 3	17 11½	16 3	22 5½	26 3	13 0	13 0
1834	44 4	38 6	26 5	23 10	20 10	19 1	27 11			14 5
1835	38 7	30 0	25 1	22 2	20 10	18 1	26 8	28 0	16 0	
1836	52 1	41 5	32 1	24 8	26 1	21 8	34 9		21 5	21 5
1837	52 1	42 0	26 5	23 10	20 3	17 5	27 7		15 3	15 3
1838	67 7	57 7	37 5	31 4	28 5	15 2	39 7		21 2	21 2
1839	47 5	32 2	28 9	23 5	24 8	21 0	29 1		19 8	19 8
1840	57 4	43 6	26 6	21 0	22 8	18 0	31 5		16 5	16 5
1841	53 0	40 7	26 10	21 3	17 11½	14 3	28 0		15 6	15 6
1842	45 10	40 0	23 10	20 10	16 8½	14 0	24 3½		12 11	12 11
1843	48 5	43 5	27 11	25 0	18 6½	16 0	27 9	33 0	13 5	13 5
1844	43 7	36 1	27 0	21 3	19 0	16 2	31 0	30 2	14 3	14 3
1845	53 5	42 9	29 9	22 0	24 0	21 2	33 1	26 3	19 1	19 1
1846	62 9	53 3	37 11	32 8	32 9	24 6	40 7	52 0	24 8	24 8

cles named as standards shall be taken on the first Belfast market days which shall occur after the 1st of January, 1st of May, 1st of August, and 1st of November in each year, (computed according to Henderson's tables of prices,) and the mean of the four prices of each articles so found shall be taken on the average of the same for the year; and the articles taken as standards shall be the following, viz:—wheat, oats, butter, bacon." The agreement states the prices of these articles as taken for the year 1849, and then provides, "That the computation of the fall or rise of rent, shall be made in this manner; that is to say, the fifth of the rent shall be computed according to the price of wheat—one fifth according to the price of oats—two fifths according to the price of butter—and one fifth according to the price of bacon; and when computation shall be made, as regards each portion of the rent as above stated, the several portions as reduced or raised shall be added together, and the amount so found shall be the rent for the year; and the first half-yearly payment made after the 1st of May in each year shall be made at the rate of the preceding year, but shall be taken as a payment on account of the whole year; and the settlement for the whole year shall be made at the first payment after the 1st of November in each year."

The proportions of rent to produce in this agreement are adapted to the nature of the farm, which is cultivated on a five-course system, of turnips, wheat, two years grass, and oats. Thus the butter represents the grass, the bacon the green crops (pigs only being sold off from this farm), and the wheat and oats their respective crops. Upon other districts, where the rent is raised by the sale of cattle, sheep, or wool, Mr. Sharman Crawford makes the rent depend upon the market price of these articles according to the proportions in which they are produced.

This system is of course open to the general objections, that the only element of calculation is price and not quantity, and that the returns of market prices are liable to error or influence.

In England, the most important adoption of grain rents has been upon the large estates of the Duke of Sutherland. Upon some of these the rent is made up of a fixed money payment

and a corn rent. The farms are in the first instance valued on the supposition that the tenants are to sell their wheat at 10s. a bushel, and their barley at 5s.; and the strong land farms are calculated on wheat only. The price of produce upon which the valuation is made is assumed as a maximum; in any other respect it is manifestly unimportant, except for the purpose of after calculation. The grain rent is then struck upon an average of the preceding five years' prices. The maximum is 80s. and 40s., and there is no minimum. Under this system the variation will be very slight unless some great permanent change should occur; in which case the rent would gradually accommodate itself to the altered circumstances (o).

A simple method of adjustment, of which a form will be found among the precedents, is to assume the price of wheat to be 50s., barley 30s., and oats 20s., which will give an

(o) The working of this system with which I have been favoured by will appear from the following table, James Loch, Esq., M.P. :—

*Comparative statements of grain rents on two farms; the one turnip and barley, and the other wheat farm.*

#### TURNIP AND BARLEY FARM.

Quantity, { Maximum Rent—Wheat 80s. } Represented by  
381a. 2r. 6p. { and barley 40s. per qr.— } 88½ qrs. wheat, and  
£708 10s. { 177½ qrs. barley.

	Average of Five Years.		Year's Rent.	
	Wheat.	Barley.		
	s. d.	s. d.	£	s. d.
1840	55 9	32 10	537	13 7
1841	61 2	34 1	572	14 6
1842	64 4	34 1	586	14 9
1843	64 7	33 6	582	13 6
1844	61 8	33 2	566	16 3
1845	57 10	32 0	539	10 3
1846	55 2	31 0	518	17 0
1847	52 10	31 0	508	10 6
1848	55 4	34 4	549	2 7
1849	55 4½	34 8½	552	18 3

#### WHEAT FARM.

Quantity, 255a. 2r. 10p.—Maximum Rent, £364. { Represented by 91 qrs. wheat.

aggregate price of 12s. 6d. for the three bushels. Every variation of sixpence in this aggregate price will represent a variation of one twenty-fifth or four per cent. The rent therefore will be four per cent. above or below the standard rent named for every sixpence by which the average price of the three bushels exceeds or falls short of 12s. 6d. This grain rent has the merit of simplicity, and may of course be adapted to any average of years (*n*).

Grain rents, however, have never found much favour with the general body of English agriculturists: nor do they appear likely to be adopted, or likely to be necessary in tenancies from year to year. In the case of leases for considerable terms,

	Average of Five Years. Wheat.	Year's Rent.	
	s. d.	£	s. d.
1840	55 9	253	13 3
1841	61 2	278	6 2
1842	64 4	292	14 4
1843	64 7	293	17 1
1844	61 8	280	11 8
1845	57 10	263	2 10
1846	55 2	251	0 2
1847	52 10	240	7 10
1848	55 4	251	15 4
1849	55 4½	252	0 11

The averages taken from the five years next preceding, per imperial measure, for England and Wales.

Example of the averages for 1849:—

	Wheat.			Barley.		
	£	s.	d.	£	s.	d.
1844	2	11	3	1	13	8
1845	2	10	10	1	11	8
1846	2	14	8	1	12	8
1847	3	9	9	2	4	2
1848	2	10	6	1	11	6
	5)13	17	0	5)8	13	8
	2	15	4½	1	14	8½

In taking the average for the year 1850, the averages for 1844 will be thrown out and that for 1849 taken in.

(\*) See *post*, Miscellaneous Stipulations, No. 22.

they would appear to afford a very necessary protection to the farmer who expects a permanent fall in the value of produce beyond his power to meet by increased production ; or to the landlord, if such there be, who contemplates some great future decrease in the value of the precious metals.

Services and payments in kind are now universally condemned by practical men. Thirlage, fowls, use of farm carriages and labourers, will all be estimated by an intelligent tenant at a money price much higher than their value to the landlord ; for he must reckon the petty annoyances to which they may subject him, and the probability of his carts and labourers being taken from him at a time when their services are most required upon the farm.

“The most suitable and satisfactory kind of rent,” says a writer of some authority (n), “is, it is conceived, a fixed payment in money, calculated so as to afford a tenant the profits which are necessary to him, and enable him to bear up under those occasional depressions of price or deficiencies of produce which are inseparable from the nature of his trade ; and this is the kind of rent which an intelligent tenant will prefer, under any other system except that which ought never to exist—a system of rack rents.”

This opinion, it is presumed, proceeds upon the assumption of a state of things which is by no means the rule throughout England and Wales, namely, that the farmer has the full amount of capital necessary to work his farm during bad seasons, and to wait for the average of years.

If the rent be a sum certain, the just amount must obviously be the result of a computation made by a person whose experience supplies him with all the data upon which the computation must proceed. Some writers have professed to lay down rules by which the process may be worked ; but better authorities consider any such rules much too fallible to be useful. The rent of two estates of similar advantages and fertility will differ cent. per cent., according to the state of agriculture and the habits of the tenantry. East Lothian is much poorer in soil, in climate, and in all the advantages of markets and facility of obtaining manure than Warwickshire ;

(n) Professor Low on Landed Property, p. 49.



yet East Lothian pays much more than twice the rent per acre which Warwickshire pays. In Warwickshire, the rent with rates and tithes, amounts to little more than one fourth the produce. In East Lothian, more than one half the produce is paid in rent alone. In Scotland, it is a usual calculation that one half the produce goes for rent. In England, the proportion rarely exceeds a fourth, except upon grass farms.

Practically, rent is in England usually fixed by comparison with the adjoining land, or by the common rate of the neighbourhood. If the investigation proceeds beyond this, the valuer commonly estimates the value of the average produce of the farm, sets apart one third for expenses, one other third for the farmer for capital and maintenance, and deducts from the remaining third, taxes, tithes, and assessments; the residue is the rent.

This rough estimate may sometimes be right, but cannot always be so, since clays and loams, arable and grass farms, vary enormously in the proportion of expense to produce: and hence we find practically, that where enterprize is equal, and this system of valuation prevails, light soils produce wealthy farmers.

A more pretending system of valuation is to estimate the average produce of the farm, and to deduct therefrom, some writers say fifteen, and others twenty, per cent. upon the fixed capital employed by the farmer in his business; the outgoings for cultivation, tithes, and taxes being then calculated, and the remainder will be the rent (*o*).

This, however, is so entirely the business of a practical land valuer, that the landowner or his legal adviser will not prudently form a judgment upon the matter, although it may be well that they should be able to test the capacity of the valuer to conduct his valuation by the proper process (*p*).

(*o*) Even this will be a corn rent; for the valuation must of course be based upon the average price of farm produce at the time of the valuation, or at any rate upon some estimate by the valuer of the probable average price.

(*p*) See Professor Low on Landed Property; Bayldon on Rents. Al-

though I have cited the latter work upon this and other occasions, I am not satisfied with it as an authority, and use it only when its statements are confirmed by the judgment of practical men. If from those of its assertions which I can test I may judge of its accuracy in others which I cannot, it is not to be much

Although it is usual throughout England to receive farm rents half-yearly, yet it is obviously prudent in an agreement to make them payable quarterly, and in many agreements a power is reserved to demand the rent in advance, or, as it is called, *forehand rent*. When this is done, it should be clearly expressed whether the payment in advance is to be of the current quarter for the time being during the whole term, or for the first payment only (*q*).

In Scotland, the tenant is not required to pay any part of his rent until his first crop of corn has been reaped; so that upon an autumnal holding he has always a full half-year's rent in hand. This system operates to render the capital required less, and the competition for land greater.

*Additional Rents.*—Nearly all the agreements and leases in use in England contain additional rents, varying from 4*l.* to 50*l.* an acre, to compensate for ploughing up old turf, or for having more than a certain proportion of the farm in tillage, or for using the land contrary to the covenants. The right to this additional rent is not waived by the acceptance of the regular rent, after the landlord has been made aware of the irregularity in the cultivation (*r*). Where in a lease it was

relied upon. We are told, for instance, (p. 34,) that "the successor is usually named in the lease; but, in case of that name or names becoming extinct, the heir at law succeeds, a lease being heritable;" and (p. 8) the agricultural reader is informed that "rent *sec* or dry rent has no clause of distress," without the least intimation of the statute of Geo. II. When I find calculations in this work (pp. 98 and 102) which give as their result that "a middling clay soil at a moderate distance from the homestead, and with good roads for communication" ("capable of producing good crops of wheat, clover, and beans, although not green crops") will yield only 10*s.* an acre as rent, when wheat is 52*s.* a quarter, and oats 20*s.*, I contrast these figures with the every-day valuations made of such land, and suspect the figures to be worthless. One curious item

in the calculation is that the produce of four years is brought out 22*l.* 16*s.*, and the tithes (which are supposed to be payable in kind, p. 85) are computed to be 9*s.* for the four years. Now, a very simple operation of arithmetic demonstrates that of the 22*l.* 16*s.*, 2*l.* 5*s.* 7*d.* (and not 9*s.* only) would be taken from the farmer for tithes, and the difference would nearly exhaust the whole of the computed rent. Thus, according to this system of valuing for rental, a middling clay soil, producing twenty-four bushels of wheat and forty-eight bushels of oats per acre, is when wheat is at 52*s.* and oats at 20*s.*, worth exactly 10½*d.* per acre per annum to rent!

(*q*) *Holland v. Palser*, 2 Stark. 161; *Hopkins v. Helmore*, 8 Ad. & E. 463.

(*r*) *Denton v. Richmond*, 1 Cr. & M. 734; 3 Tyr. 630.

stipulated that 5*l.* an acre should be reserved during the last twenty years of a term for every acre of meadow which the lessee shall plough, dig, ear, break up or convert into tillage during the last twenty years of the term; and so after that rate for any greater or less quantity than an acre, or less time than a year; it was held that the additional rent was due in the last twenty years, if the land was ploughed during those years, whether it was first ploughed within the last twenty years or before; and that the rent continued payable during the whole of the twenty years, although the land had been again laid down to permanent grass (*s*). Where a lease stipulated that for every acre, and so in proportion for a less quantity, which the lessee should suffer to be occupied by any other person without the consent of the landlord, an additional rent should be paid; and the tenant without consent, suffered other persons to use small portions of the land for potato patches, in consideration of their manuring the land; it was held that the landlord was entitled to the additional rent—although it was proved to be customary to adopt this course, and the tenant under the lease covenanted to cultivate according to the custom of the country (*t*).

These additional rents though commonly called penalty rents are not considered by the law as penalties, but as liquidated satisfaction, fixed and agreed upon between the parties (*u*).

Where a lease was made at a certain fixed annual rent, with a further reddendum of 50*l.* per annum for every acre of the lands, (except, &c.,) which the lessee should plough up, and the jury in opposition to the direction of the learned judge gave a verdict for damages less than the amount of the increased rent, the Court directed a new trial without payment of costs (*v*).

Where in a lease of lands renewable for ever, the lessee covenanted that he and his heirs should, with all their family, live on the demised premises during the continuance of that

(*s*) *Birch v. Stephenson*, 3 Taunt. 469; *Howell v. Richards*, 11 East, 633.

(*t*) *Greenslade v. Tapscott*, 1 Cr. M. & R. 55; 4 Tyr. 566.

(*u*) *Rolfe v. Peterson*, 2 Bro. P.

C. 436; *Jones v. Green*, 3 Yo. & J. 298; *White v. Sealey*, 1 Doug. 49.

(*v*) *Farrant v. Olmius*, 3 B. & Al. 692; and see *Bowers v. Nixon*, 18 L. J. R., Q. B. 34.

and every other lease, and that whenever he or they should fail to do so, an additional rent should become payable, with the usual remedies of distress and entry to compel the payment thereof, it was held that the reasonableness of this covenant was properly triable at law, and that a Court of equity ought not to interpose or give relief against it (x).

It has been sometimes questioned whether it is expedient to provide these additional rents, for the landlord can obtain no larger compensation for breach of the covenant than the sum named, however great may be the damage committed, and a tenant may often do much more damage by ploughing up an ancient meadow than an additional 5*l.* an acre, perhaps only once paid, would recompense.

Equity will neither relieve the tenant from the payment of the increased rent, nor restrain him from violating his covenant (y). In *Lowe v. Peers* (z), Lord Mansfield said, "There is a difference between covenants in general and covenants secured by a penalty or forfeiture. In the latter case the obligee has his election: he may either bring an action of debt for the penalty (after which recovery of the penalty he cannot resort to the covenant, because the penalty is to be a satisfaction for the whole); or if he does not choose to go for the penalty, he may proceed upon the covenant, and recover more or less than the penalty, *toties quoties*."

"And upon this distinction they proceed in Courts of equity. They will relieve against a penalty upon a compensation. But where the covenant is to pay a particular liquidated sum, a Court of equity cannot make a new covenant for a man; nor is there any room for compensation or relief. As in leases containing a covenant against ploughing up a meadow, if the covenant be 'not to plough,' and there be a penalty, a Court of equity will relieve against the penalty, or will even go further than that (to preserve the substance of the agreement). But if it is worded 'to pay 5*l.* an acre for every acre ploughed up,' there is no alternative, no room for any relief against it, no compensation. It is the substance of the agreement."

(x) *Ponsonby v. Adams*, 6 Bro. P. 396.  
C. 417.

(z) *Burr*. 2225.

(y) *Benson v. Gibson*, 3 Atk. 395,

SECT. 6.—*Covenants by Tenant.*

*Covenant to pay Rent and Taxes.*—The rule of law is clear that in order to constitute a covenant no technical words are necessary. It is sufficient if it can be collected from the terms of the instrument that the thing is to be done (*a*).

The first covenant in order of place is usually the covenant to pay the rent reserved. Without such an express covenant the lessee would be freed from his liability to pay rent by assigning his lease; for the implied covenant to pay rent arises from the relation of landlord and tenant, or from the “privity of estate,” and that ceasing by the assignment the obligation ceases (*b*).

From the fact of the tenancy the law implies a covenant to pay rent, and this implied covenant to pay rent and taxes runs with the land and binds an assignee; but it has been said that a special covenant to pay rent and taxes does not bind executors unless they are named (*c*). No particular form of words is requisite to create the implied covenant. It arises upon the ordinary words of the *reddendum* (*d*).

The words “yielding and paying the yearly rent, &c. free and clear of all manner of taxes, charges, and impositions whatsoever,” imply a covenant to pay the whole rent discharged of all taxes before or afterwards imposed (*e*). Land tax and property tax, by the provisions of the statutes imposing these taxes, are to be paid by the tenant and deducted from their rent. But the tenant must deduct it at his next payment of rent, or he cannot recover it afterwards as money paid to the landlord’s use (*f*). An express covenant may include the payment of the land tax, and a general covenant to pay all taxes will include this tax (*g*), but a covenant on the part of the

(*a*) *Duke of St. Albans v. Ellis*, 16 East, 352; and *Cannock v. Jones*, 3 Ex. 237, where the rule is stated by Parke, B., in the words used in the text.

(*b*) *Fisher v. Ameers*, 1 Brown & G. 20; *Anon.* 1 Sid. 447, pl. 9; *Staines v. Morris*, 1 Ves. & B. 11.

(*c*) *Shep. Touch.* 178.

(*d*) *Webb v. Russell*, 3 T. R. 402; *Vyoyan v. Arthur*, 1 B. & C. 416; *Church v. Brown*, 15 Ves. 264.

(*e*) *Giles v. Hooper*, Carth. 135.

(*f*) *Cumming v. Bedborough*, 15 M. & W. 436.

(*g*) *Amfield v. White, R. & Moo.* 246.

tenant to pay the property tax is void (*h*). A tenant who agreed to pay all outgoings whatsoever, rates, taxes, scots whether parochial or parliamentary, that then were or should thereafter be chargeable upon the lands, the present land tax excepted, was held liable to pay an extraordinary assessment made by the Commissioners of Sewers for a work of permanent benefit to the land (*i*). But a covenant to pay the rent, "clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed upon the premises, or upon the lessor in respect thereof, the landlord's property tax only excepted," does not extend to a liability to repair a bridge *ratione tenuræ*, although a local act authorized a rate for the repair of the bridge (*k*).

*Covenants against Waste—Generally.*—The law implies a covenant on the part of the tenant that he will do no waste, will keep the farm house in reparation, will not cut down timber trees, will fence the coppices when they be new cut, and the like (*l*). But it is usual to make these legal obligations more definite by special covenants. Where the object is to extend or to limit the legal obligation, such covenants are obviously necessary: but where there is no such intention it is much safer to trust to the operation of the general law. The Courts recognise this distinction between express and implied covenants, that the former are to be taken more strictly (*m*); so that it may well happen that the evil intended to be guarded against will be better met by the silence of the instrument than by an express covenant.

The provisions introduced into leases and agreements with a view to provide for the sustentation of the farm are too numerous to be here discussed, and they are also far too numerous for a complete set of them to be introduced into any one document. The best advice which can be given perhaps is to use them as seldom as possible, and never without some special reason. The chief reason for the insertion of many of the covenants with which our agricultural leases are crowded

(A) See stat. 5 & 6 Vict. c. 35, ss. 149.

73 and 103.

(i) *Waller v. Andrews*, 3 M. & W.

312.

(k) *Baker v. Greenhill*, 3 Q. B. R.

(l) *Shep. Touch.* 161.

(m) *Shubrick v. Salmond*, 3 Burr. 1639.

is a doubtful dictum, that upon an implied covenant an action of covenant will not lie against an executor (n).

*Covenant to repair.*—There are some matters of a general character which cannot commonly be left to the implication of law. Such is the subject of repairs, when, as is commonly the case, the tenant from year to year is expected to do something more than the law (which generally excuses him all permissive waste (o),) obliges him to. The general legal obligation is only to keep the house wind and water tight, and to do common reparation to windows, doors, shutters, and the like. If the tenant is to lead the materials, or to do substantial repairs upon being found material, the case should be specially provided for (p).

But where there is an express covenant to repair, the implied covenant ceases, and the rights of the parties must be read in the words of the instrument (q). And where a tenant by his lease, signed by tenant and landlord, covenanted to keep the premises in repair, "the said farm-house and buildings being previously put and kept in repair by the landlord," it was held that these words amounted to a covenant to put in repair by the landlord (r). In the very recent case of *Neale v. Radcliffe*, not yet reported, but decided in July last, it was held that these words raised a condition precedent to the tenant's liability to repair.

In the recent case of *Cannock v. Jones* (s), after the usual covenant to repair, it was added, "the said farm-house and buildings being previously put in repair and kept in repair by the said E. J." (the lessee). The lessee further covenanted to build a beast house and floor the cottages, "the whole of which is agreed to be left to the superintendence of the said S. C. and E. J. her son." It was held that the words first above quoted amounted to a covenant to put in repair, and that the words secondly quoted did not amount to a condition precedent or concurrent.

Where the tenant covenants to keep and at the expiration

(n) Shep. Touch. 176.

(o) Amos and Ferrand on Fixtures, 226; Elmes on Dilapidations, 81.

(p) *Salop v. Crompton*, Cro. Eliz. 777, 784; *Ferguson v.* ———, 2

Esp. 590.

(q) *Standen v. Christmas*, 10 Q. B. R. 135.

(r) *Cannock v. Jones*, 18 L. J. Ex. 204.

(s) 3 Ex. 233.

of the term to deliver up all buildings in good repair, he must keep them in good repair although he found them in bad condition, and the extent of such repair will be measured by the age and class of buildings (t). But in an action for breach of such a promise or covenant, the defendant is entitled to prove at the trial what the state of the premises was at the time of his entry (u). A general covenant to repair and leave repaired extends to all buildings erected during the tenancy (x), and compels the tenant to rebuild in case of accidental destruction by fire or tempest. If therefore this form of covenant be adopted, accidents by fire and tempest should be excepted, unless it is intended that the tenant shall run this risk.

*To insure.*—An express covenant to insure the house and farm buildings, and also the farming stock, since it is the landlord's security for his rent, is a very expedient covenant, and one much favoured by the Courts (y). Any short interval of non-insurance, though no damage occurs, creates a breach (z). In *Doe d. Muston v. Gladwin* (a), the lessee covenanted to insure and continue insured buildings in the joint names of himself and the lessor, his executors or assigns. The lessee insured in his own name singly, but showed the policy to the lessor, who approved of it and accepted rent during the next three years. The policy continued in the same form, and the premium was duly paid. The lessor assigned, and the assignee brought ejectment for a forfeiture incurred by not insuring in the joint names. No notice had been given to the lessee to alter the policy. The Court held that the covenant to insure in the joint names was a continuing covenant, and was not waived by the conduct of the lessor, except as to past breaches; and that the ejectment lay.

A Court of equity will not relieve against a forfeiture for breach of a covenant to insure (b).

(t) *Payne v. Hayne*, 16 M. & W. 541.

(u) *Burdett, Sir F., v. Withers*, 8 Ad. & E. 137.

(x) Bac. Abr. Covenant (F), 1 Esp. N. P. 277; but see *Worcester v. Rowlands*, 9 C. & P. 734; *Brecknock, C., v. Pritchard*, 6 T. R. 750; *Digby v. Atkinson*, 4 Camp. 275.

(y) *Doe d. Bridger v. Whitehead*, 8 Ad. & E. 571.

(z) *Doe d. Pitt v. Shewin*, 3 Camp. 134; *Doe d. Darlington v. Ulph*, 18 L. J., Q. B. 106; *Penniall v. Harborne*, 11 Q. B. 368.

(a) 6 Q. B. R. 953.

(b) *White v. Warner*, 2 Meriv. 459.



We have already seen that the rent continues payable, and that the landlord is not obliged to rebuild, even though he may have insured the premises (c).

*Old Grass Lands.*—Agreements and leases usually contain express covenants against breast ploughing, or push ploughing, or pareing and burning, or otherwise breaking up old turf. This stipulation does not appear to be absolutely necessary; for changing the course of husbandry by destroying old turf is voluntary waste at common law (d). It is however undoubtedly safer, if the landlord intend to keep his old turf intact, not only to insert a covenant to that effect, but to set forth the fields which are not to be ploughed. The most convenient way of doing this will commonly be by reference to the numbers on the tithe apportionment map.

Some agricultural writers doubt the expediency of this restriction. Professor Low says, "The system of applying land permanently not only to the production of pasturage but of hay is so universal in England that it has become a characteristic of English agriculture confirmed by the longest habit. Yet it is certain that this is not the most advantageous mode of raising a large return of raw produce, and that by means of a regular alternation of crops a great increase of human food can be obtained. It could be shown, by calculations intelligible to every farmer, that more than twice the real produce of human food can be derived from land under a regular alternation of crops, which can be obtained from land of ordinary fertility kept always in grass."

This was a cogent argument when the Professor wrote (in 1844), and when protection, or in other words a mitigated monopoly, imposed a duty of production. But at present, when the landlord brings the produce of his land into the market of the world, there is no more obligation upon him to produce a maximum quantity of human food than there is upon the factory owner to keep his works constantly in action, or upon the iron master to produce iron at a loss. Mr. Low remarks that "land in old turf may, and does in innumerable instances, yield a higher and securer rent than the same land

(c) *Ante*, p. 14.

(d) Co. Litt. 53; Wood's Ins. 521; 1 Cr. Dig. tit. 3, s. 14.

would do if cultivated :” but he attributes this solely to a want of agricultural skill in farmers. I believe that this is the common view of all scientific agriculturists, and that it is their opinion, that a farmer cannot be considered as conducting his business with that freedom of action necessary to success while he is prohibited from ploughing up any piece of land upon his farm. It is obvious, however, that no such power can be safely given to a tenant from year to year, and the landlord who sacrifices his veto upon breaking up old turf, even to a lessee for a long term, must not only have great faith in high farming but also great confidence in the capital and judgment, as well as in the enterprise, of that tenant.

*Trees.*—If trees are excepted from the demise, which has been the course above recommended, any covenant respecting them is unnecessary. Such covenants, however, will be found in several of the forms hereafter given, as in use in various parts of the country.

A covenant not to remove or grub-up trees is broken by removing trees from one part of the premises to another ; and so it is by taking away trees, even if the lessee plant a greater quantity than he takes away, unless those taken away were dead (e).

A covenant in a lease to deliver up at the end of the term all the trees standing in an orchard at the time of the demise, “reasonable use and wear only excepted,” is not broken by removing trees decayed and past bearing from a part of the orchard which was too crowded. *Per* Ellenborough, L. C. J. —“If the trees are too crowded, the removal of such as are past bearing must be considered the reasonable use of the orchard and the trees (f).”

It is said that the custom in some parts will allow an outgoing tenant to lop and top all trees which are not timber trees. If, therefore, the preservation of the trees upon a farm is entrusted to a covenant, it will be well to forbid all lopping except with the consent of the landlord, and also ploughing within five yards of the trunk of the tree. The tenant is not bound to provide fences to preserve excepted

(e) *Doe d. Wetherell v. Bird*, 6 C. & P. 195.

(f) *Doe d. Jones v. Crouch*, 2 Camp. 448.

trees from being injured by his cattle, but the landlord should himself protect them (g).

*General Covenants as to Cultivation.*—The law, as we have already seen, implies a covenant on the part of the tenant or lessee that he will use the premises in a husbandlike manner (h). It is usual, however, to insert in leases and agreements express stipulations to this effect, and this becomes more especially necessary where the lease or agreement contains a clause that the tenancy shall be governed by the terms of the instrument and the general law, without reference to the custom of the country. A multitude of provisions bearing upon the general culture of the farm will be found among the forms of agreements collected in this work. They have, however, been inserted chiefly because they are found in extensive use, and because special circumstances may in particular instances render it advisable that they should be retained. Their adoption is, however, not otherwise recommended, and whether they be or be not used there should always be a general covenant to perform all farming operations, whether of culture, sustentation, or otherwise, in the best and most efficient manner, and with the best and most approved materials. The consumption of the whole of the manure, or legitimate materials for manure, produced upon the farm, upon the land will generally be provided for in the particular covenants; but if there be no such provisions, it will be necessary to provide for this by such a general covenant as shall embrace the intentions of the parties. Ample choice of such provisions will be found among the forms hereafter given.

*Incoming Payments.*—If the tenant is admitted to possession before he has paid to his predecessor the amount of the valuation, the agreement or lease should never omit a stipulation or covenant binding him to pay immediately on demand the amount found due to the preceding outgoing tenant upon the valuation. Instances are very common of persons without substance getting possession of a farm with all its stock, and the landlord in such cases finds himself obliged to pay the outgoer, and the farm is ruined before he can get the intruder

(g) *Glenham v. Hanby*, 1 Ld. Raym. 739; *Clithero v. Higgs*, Sir W. Jones, 388.

(h) *Powley v. Walker*, 5 T. R. 373.

out. The most stringent eviction clause is necessary to secure the landlord from this danger when the entry precedes the valuation and payment.

*Particular Covenants as to Culture.*—I come now to a portion of my subject in which I must rely entirely upon the writings and testimony of practical agriculturists, and can derive no assistance from law books. The object of culture covenants is, or should be, to prevent the deterioration of the farm, and to accomplish this with the least possible restraint upon the free action of the farmer. It appears to be the general opinion of landlords, tenants, lawyers, and land agents, that this object has been hitherto but very imperfectly attained; and efforts are now being continually made throughout the country to devise some single covenant which shall be a touchstone of good farming, or some set of covenants which shall leave the farmer free and secure in working and improving his land, but restrained from impoverishing it. Such of these as have received the sanction of any agriculturist of reputation will be found among the subsequent collection of forms.

Writers upon this subject are tolerably consentient in their censure of the present form of leases, but are seldom very perspicuous, and are never quite in accordance with each other when they undertake to suggest what a lease or an agreement should be. One gentleman, for instance, writes in a tone of high authority, as follows :—

“ When leases are granted a dictatorial power is yet in many cases retained of prescribing the mode of management which the farmer is to pursue ; just as if we should direct a maltster how many quarters of barley he must steep in a week, or tell a cotton spinner how many times the spindles of his machinery must revolve in a day. This dictation may be considered as the lingering remains of the power which the possessors of land at one time assumed and used of universal dominion, and even of disposing of human life. A lease of land must be a simple deed easily understood, and the terms of very easy performance, and should rather prescribe what the farmer is not to do than what he is to perform ; but when the management is intrusted to lawyers, those expounders of feudal jargon and mystifiers of common sense, we find the whole deed perplexed

and contradictory, and the fruitful source of litigation. Most leases serve as objects of ridicule with enlightened practical men. Clogged with hurtful and impossible clauses, and bewildered with technical language and legal phraseology, they form a most precious specimen of agricultural barbarism, adopted at first from ignorance, and continued by the very sublime art of acting in direct opposition to evidence, and by the very valuable privilege of remaining ignorant with impunity.

"The agreements, stipulations, and restrictions in leases should be as few as possible, easily understood, and as easily performed. A multitude of stipulations and restrictions naturally become inoperative, and therefore are useless; and the farmer is tried to be converted into a mere machine, with regular and prescribed movements. The deed must express the term of entry and of expiry, the amount of the rent and the times of paying it, and an agreement to give up the tenure at the proper time without any warning or forms of law. The system of cultivation may be mentioned and pointed out; but very much must be left to the discretion of the farmer—to his skill, his enterprise, and his prudence. Especial care must be used that no fetters be placed on genius and enterprise. It must be very carefully and wholly disentangled from the unintelligible jargon of lawyers, who, however deeply versed in the arts of knavery, are just as ignorant of the practice of agriculture as a Hottentot or a Patagonian (i)."

Now, we may sift this ash-heap of words in vain for a single rational culture covenant. Upon the legal requisites of the lease, the "enlightened practical man" is explicit and wrong; but, upon its agricultural requirements, he supplies us with nothing but the somewhat contradictory direction, that while we mention and point out the system of cultivation, we must place no fetter upon the genius or enterprise of the farmer. "You may tie the farmer down to an unvarying round of operations, like a horse in a mill; but be careful how you fetter his enterprise." Perhaps, however, I have misunderstood this writer, and that in the leases he projects the matters that are "mentioned and pointed out" will be mere discursive topics, not intended to have any binding effect upon the parties.

(i) On Leases, by Professor Donaldson, of Hoddesdon, Herts. *The Plough*, vol. iii. p. 419.

This may appear trifling, but it is not so. It is of the first importance that lawyers and agriculturists should be convinced that in framing agricultural contracts the co-operation of both is necessary. Any ignorant depreciation of the utility, or rather of the necessity, of either the one or the other of these two branches of knowledge does harm, and should be checked.

A tenancy from year to year differs from a lease for a term, so far as culture covenants are in question, in this—that in the former case the landlord can always recover his land within eighteen months, if he disapproves of the tenant's mode of cultivation; whereas, in the latter, the lessee, if not restrained by covenants, may go on running out the land, until the inevitable bankruptcy which such a course produces brings him at last to a stand. Still, however, eighteen months and an outgoing crop may do more to exhaust a farm than many subsequent years can do to restore it, and it behoves the landlord to take care that in letting his farm he reserves power to protect it from being permanently injured.

Besides the obvious source of injury which is to be found in slovenly farming, allowing ditches to become choked, drains to become inoperative, and the land to become foul with weeds, all which work their own immediate punishment, the great temptation which besets the tenant is to withdraw from the land the elements of production by over-cropping.

The crops usually produced in the fields of England have been classed under four heads; 1st, white corn crops, such as wheat, barley, oats, and rye when not cut green; 2nd, pulse crops, such as beans, peas, and the tare when cultivated for its seeds; 3rd, fallow crops, such as turnips, potatoes, carrots, parsnips, beet, mangles, rape, and sometimes cabbage; 4th, forage and herbage crops, either mown or depastured, such as lucern, saintfoin, clover, and grasses. There is a fifth class of plants, which comprehends all that are not included within the other classes; plants cultivated for uses in the arts, having no part in the business of the farm, and contributing nothing to its power of reproduction, such as hemp and flax, when cultivated only for the fibres of the bark, wood, chicory, and the like.

The causing the first four of these classes of crops to follow

each other in a given order, constitutes what is called the rotation of crops.

The object of such rotation is too obvious to be here dwelt upon at any length. The different crops above enumerated vary in their elements, and therefore in the particular qualities which they abstract from the soil—in their habits of growth (their roots being fibrous or long descending), and therefore in the portion of the soil which they act upon—in their modes of culture, and therefore in the greater or less turning and pulverization of the soil, and application of putrescent manures which they occasion—in their greater or less tendency to encourage the growth of noxious weeds and parasitical fungi, and therefore in their effect upon the soil to clean it or to render it foul—and, lastly, and chiefly, in their destination either to become fodder for cattle, and return to the land in the shape of manure, or to be exported from the farm.

Thus the white corn crops are especially exhaustive—they receive little tillage during their growth, favour the increase of noxious grasses, are not fully grateful for the direct application of putrescent manures, and their most essential parts, that is their seeds, are exported from the farm.

The pulse crops are unfavourable to the growth of weeds, require culture during their growth, are favourable to the direct application of putrescent manures, and differ from the cereal grains in their habits of growth, and in the elements which they take up from the soil. They are exhaustive because their seeds are exported, but their culture tends to clean and enrich the land for the subsequent crop.

The fallow crops clean and enrich the soil without exhausting it. They require that the land be ploughed up before winter, and lie fallow till the spring. They remunerate large and direct supplies of putrescent manures. They are intolerant of the growth of weeds; and they are capable of being entirely converted into manure, and thus, after giving sustenance to cattle, returning again to the farm. After passing through the bodies of cattle, four-fifths of the fertilizing principle which these plants contain return to the soil in the dung.

The forage plants whether cut green, made into hay, or depastured, are not exhaustive, because they return to the soil in manure, both by being consumed by the stock upon the

farm, and by the decomposition of their roots. In this condition the land is thought to rest, and it was considered to recover strength in proportion to the length of time it so remained; an opinion now less general among agriculturists.

It is obvious however that every kind of land is not adapted to the produce of all these species of crops. Stiff and humid soils, unfit for the production of turnips, are said to be incapable of being worked (although this is vehemently disputed among agriculturists) without a summer fallow, which in such cases takes the place of the fallow crop as a preparation for corn; but has the disadvantage of consuming a whole year's labour, manure, and rent, and yielding no crop in return.

Even this scanty sketch of the nature of farm crops will serve to show the non-agricultural reader the necessity of the covenant, that all hay, straw, fodder and green crops, shall be consumed upon the farm. Perhaps, also, enough has been set forth, as to the variety of the habits of growth and consumption of elements peculiar to each species of crop, to show the propriety of alternations of white and green crops, or, in other words, of rotation of crops.

There are many situations however in which the sale of hay, straw, turnips, beet, and other staples of manure is looked to as part of the rent-producing growth of the farm. This is usually in the neighbourhood of towns where the facility of importing manure is very great. In such cases the usual criterion that high farming is in proportion to the quantity of stock fatted does not hold, and the covenant should be express as to the quantity of manure to be imported for every load of hay, straw, or turnips, led off. It is scarcely possible for a landlord to guard against his land being run out by a knavish tenant, if this licence be granted, for to do so he must watch every cart that leaves and enters the yard. It should be given only to tenants in whom he has full confidence; and in a lease for a term it should be combined with stringent covenants for manuring during the last two years (*k*). Under any circum-

(*k*) A very well considered covenant of this character will be found in Form of Leases, No. 2. It must be remarked, however, that the tenant to whom this lease has

been granted, and for whose taking it was originally drawn, is one of the most enterprising farmers in England.



stances it is a most dangerous though often a most necessary licence, for it goes to the whole principle of the reproductiveness and self-restoration of the farm.

The fertility of the land may be preserved by the non-withdrawal of the natural elements of produce, or the supply of new elements proportioned to the quantity withdrawn. The rotations in use throughout the country are intended to unite both these means, although in many instances they are not well adapted to their object.

The shortest rotation is a period of two years, such as wheat or beans in continual alternation. Agriculturists of great authority designate this as an eminently defective rotation, both crops being very exhaustive, each recurring at a short interval, and no fallow to allow of tillage. I have seen others, however, point to lands upon which this course has been carried out for thirty years without intermission or deterioration of the soil. This is obviously a most productive system of culture ; but it is evident that it is applicable only to land of great natural fertility, and is to be maintained only by a large supply of extraneous manures. When the landlord therefore intends his farm to be so used, he should exact covenants for the application of a sufficient quantity of manure (not the produce of the farm) between every corn crop.

The next rotation in common use is the four-course rotation. This, under the name of the Norfolk shift, is the system almost universally adopted upon light soils by farmers who pretend to good husbandry. This rotation is, 1st, turnips, manured ; 2nd, barley, with grass seeds ; 3rd, grass, used for hay, forage, or herbage ; 4th, wheat. It varies in some respects with the nature of the soil ; and sometimes spring-sown wheat is grown in the second year instead of barley, or oats in the fourth year instead of wheat.

Upon very poor clay soils summer fallow is substituted for turnips. But such a soil, with a summer fallow every fourth year, could scarcely pay for cultivation, unless by the application of great capital and an extensive system of stall feeding.

By providing that one-fourth of the farm shall always be in grass of last year's sowing, and one-fourth in fallow crops or fallow,—or by providing that not more than one-half the farm

shall be in corn and one-fourth in fallow crops or fallow, and by adding a provision against two corn crops following in succession, we compel the four-course system.

The five-course system is a lower system of farming, produces a less gross amount of produce, and requires a smaller expenditure of manures. It may be, 1st, fallow crop or summer fallow, manured; 2nd, corn crop, sown with grass seeds; 3rd, grass, depastured or mown; 4th, grass, depastured; 5th, corn.

We compel this course by providing that two-fifths of the farm shall always be in grass and one-fifth in fallow or fallow crops, with the addition that no two white straw crops shall be taken in succession.

A six-field course varies only by allowing the seeds to remain three years instead of two. In this system the land is manured only once in six years, and two corn crops only are taken in six years. The gross produce of the farm is, of course, proportionably low.

Another six-field course of a much higher order of farming, however, is created by the prolongation of the four-field course, by the addition of a pulse crop and a corn crop after the four-course is finished; thus, turnips, barley, seeds, oats, beans, wheat. The pulse crop is manured; and thus there are two manurings, and three corn crops in each course.

We compel this course by stipulating that not more than one half the farm shall be in white straw crops, that one-sixth shall be in fallow or fallow crops, and one-sixth in pulse crops, and the remaining sixth in seeds of the last year's sowing, with the usual addition that two corn crops shall not follow each other in succession.

These are offered only as a sample of the best rotations in use, and the principles on which they are founded, and also of the covenants by which they may be enforced. It would be endless to attempt to set forth in detail the countless varieties which obtain in different parts of the country, many of which offend against all theoretical rules, and especially against that which forbids the immediate succession of corn crops. Throughout the midland counties a provision against two successive corn crops is looked upon as a most tyrannical innovation not only by farmers but also by many land agents; and

it is by no means an uncommon covenant, both there and elsewhere, that "not more than *three* corn crops shall be taken in succession."

Where, however, the landlord thinks so ill of the tenant to whom he intrusts his farm as to consider it necessary to prescribe to him the exact manner in which he shall use it, and the precise course in which he shall conduct his business, it will be well that he himself should be sure that he is making the best possible mill for the fettered animal to pace his rounds in. While prescribing a course by which the tenant cannot scourge the farm, the landlord or his agent will be very likely to prescribe a course by which he cannot pay his rent (*1*).

With every precaution, however, the rotation cannot be held unvaried. Seeds will "miss" even on light soils, and much oftener on heavy ones. The tenant must then be allowed to take a corn crop instead, or he will lose a year's rent and taxes without advantage to the land. To give any security to the tenant this should be provided for in the agreement, but in practice this is a very unusual stipulation.

Although the stipulations just mentioned leave some option to the farmer as to the articles of produce to be taken, and are therefore not so stringent as some whereof examples are to be found among the forms hereafter printed, yet they are such as tenant farmers of enterprise and capital will seldom now submit to. Recent experiments have shown that it is impossible to name a limit to the amount of produce which labour and manure may draw from land. While the crops continue abundant the earth cannot be exhausted, and as the value of the occupation of a farm is, under equal circumstances proportioned to the produce which is raised from it at

(1) I have some leases now before me in which the tenant covenants to manure every piece of land that he intends to break up for tillage with sixty bushels (double heap, Winchester measure) of well burnt lime or one hundred seams (about two-and-a-half bushels each) of sand (pulverized shell) to the acre, and so in proportion for any less quantity; and that after such dressing the tenant

shall take no more than three crops of corn or grain, and once cut the clover, and that such field shall not be again broken up for tillage for six years. This system has of course been found most ruinous, but it has been enforced for many years, and these have long been common forms of covenants in some parts of the west.

a profit, any restrictions which keep down that produce must obviously keep down the landlord's rent as well as the tenant's profits.

Upon all hands my inquiries lead me to believe that agriculturists of experience and agents who have the care of large estates are inclined to abandon the system of particular culture-covenants, at least so far as these specify an exact rotation of crops. I will cite two or three opinions to this effect from a multitude now before me. The Messrs. Sturge, of Bristol, whose practice is very extensive in the west, remark, "It is not unusual in forms of agreement which have come under our notice for the mode of cultivation, including the rotation of crops, to be specially laid down. This course in our opinion too much fetters the tenant, and stands in the way of any improvement of system, whilst the prescribed cultivation may be far from being the best for the farm. The first point is to prevent over-cropping which may be met by a stipulation that the tenant shall in each year cultivate a portion of the arable land with green or fodder crops, to be consumed upon the farm, and so alternated as to bring all the arable land under such crops at least once in so many years. The second point is to secure the keeping a proper quantity of stock, and for this purpose we provide that the whole of the green crops shall be consumed upon the premises. If these two points are properly attended to and the lands are kept clean, and the fences in good order, a farm cannot get out of condition."

Mr. Pratt, of Norwich, whose opinion upon this subject deserves no little deference, observes, speaking of Norfolk, Suffolk, and Essex, "In the present improving state of agriculture I incline to the opinion that very few restrictions as to cropping will and ought to be adopted, the only ones actually necessary being that the tenant shall not take two white corn crops in succession, and that his farm shall always remain and be left in four or five equal shifts or divisions, as the case may be." Mr. Pratt, however, adds an obligation that all the produce of the tilth lands shall be consumed on the farm.

The evidence printed with the Report of the Committee on Agricultural Customs (1848), contains some opinions to the same effect, and others which go much further.

Even in those parts of the kingdom where agriculture is, according to modern theory, in its lowest state, particular stipulations intended to improve it have been found of no practical utility. Mr. Anewrin Owen, whose judgment upon this as upon those other subjects which have engaged his special attention few Welshmen will be found to dispute, remarks in reference to the principality, "After all the trials in my neighbourhood to introduce new stipulations in agreements and leases, the peasant always reverts to the custom of the country; you cannot wean him from it, and if a jury of them be empanelled there will always be a verdict conformable to the custom of the country. Let the basis of your stipulations be simple; good tillage and clean, care of manure, and restriction in acreage of tillage; if you go further your course is dangerous. If you prescribe rotations of crops it is certain you may be wrong. If you attempt stipulations contrary to the custom of the country you will also probably be wrong, and certain to meet the indomitable obstinacy of a rough race. \* \* \* \* In these times it is presumptuous to dictate modes of husbandry; experience leads me to believe that the tenant should be left to farm as he likes, being confined simply to a certain annual acreage of corn, and undoubted expenditure of all hay, fodder, and green crops on the land, except by consent."

But, although we abandon the old system of laying down a course of culture which the landowner may deem perfect, and attempt only to stipulate for what he may consider good general rules, such as have been last alluded to, we shall find many cases where even these will not be submitted to; and where any attempt to obtain them would deprive the landlord of the most profitable class of tenants—those who bring capital and skill to the manufacture of huge crops, and who claim to do entirely what they please with the land they hire.

To meet this class of cases I have only seen two expedients. The first is that adopted in the form of leases for a term of years, No. 2, wherein general covenants for good husbandry, and a recompense to the farm for all materials of manure carted off, are added to a proviso for re-entry in case the tenant shall persist in a manner of cultivation which two arbitrators or an umpire shall adjudge to be injurious to the

farm. The second is a suggestion with which I have been favoured by Mr. Huxtable, that there shall be a single covenant on the part of the tenant to fatten an ascertained weight of meat for the butcher in every year, and to consume all manure upon the farm. This last would appear sufficient in itself to compel a high system of farming proportioned to the weight per acre stipulated.

For full information upon this point, I refer the reader to a paper by Mr. Lawes printed in the Journal of the Royal Agricultural Society of England [Vol. VIII. p. 256]. After a very interesting exposition of his experiments and calculations of inferences, Mr. Lawes continues—

“ My object is to establish as a principle, by which practical agriculture should be guided, that the amount of meat or live weight of stock produced upon a farm should bear a fixed relation to the quantity of corn exported.

“ If the truth of this postulate be once established, and the proper proportions fixed, it will no longer be necessary to enforce upon the farmer any particular rotation of crops.

“ So long as a due relation between his production of meat and export of corn were maintained, there would be no fear of an exhaustion of the soil, even if he grows no green crops whatever; and he might safely be left to make his own choice of the means he would adopt. His object being the production of a certain amount of meat at the lowest possible expense, he would naturally devote his energies to the production of large green crops in order to limit his outlay in artificial food. Knowing, too, the most profitable conditions upon which his corn could be raised, his chief attention would be paid to the economical supply of food for his stock, in full confidence as to the consequences of this course. In objection to any rule which may assume a necessary relation between the production of meat and that of corn, it may be maintained that, were any cheap and inexhaustible source of ammonia discovered, the production of meat as the means of exporting corn should be materially lessened. The difficulties, however, which we may fairly calculate upon as standing in the way of such a consummation, as well as the physiological and commercial considerations which would be involved in its influence, are such that we need not now anticipate the results.

Again, the supposition that the artificial manures at present at our command might, if directly applied to the growth of corn, be adequate to its sufficient production throughout the country, without the aid of green crops in feeding, is satisfactorily met by such calculations as the following :—The county of Norfolk is said to comprise 1,338,880 acres of land. Suppose one half of this to be cultivated on the four-course system, 334,720 acres will be under corn every year. I believe it will not be considered an exaggeration to say that cultivation in this county has increased the natural produce of corn by ten bushels per acre ; and, according to my calculations, it would require something like 50 lb. of ammonia to be supplied in any artificial manure to produce this increase of corn ; and, considering one ton of Peruvian guano to contain 224 lb. of ammonia, it would require an importation of 74,714 tons to supply the necessary amount for one year. This calculation affords some idea of the value of a rotation of crops.

“It is not very difficult to arrive at a correct knowledge of the action and value of artificial manures. They are generally composed of two or three ingredients in a state of concentration, and are far more rapid in their action upon plants, than the manure which is produced by animals. They can therefore be applied with greater success to those crops which are required in an artificial condition, and the growth of which cannot be too vigorous.

“If there be any truth in my experiments, all hope of obtaining annual crops of corn by means of mineral manures must be for ever abandoned. The employment of potash, soda, magnesia, and silica, has been suggested by chemists, from an imperfect knowledge of practical agriculture. Having found these substances in the ash of the plants, they have concluded that the soil cannot supply them in sufficient quantity. I could bring forward a great number of experiments, tried at my suggestion upon various soils, which would prove that alkaline manures were quite incompetent to remedy the exhaustion from which they suffered ; but the general practice of the best agriculturists is more convincing than a thousand such experiments. Take the case of a soil which has been in the hands of a farmer who has removed from his land suc-

cessive grain crops, and who has also sold part of his straw and hay, bringing back perhaps a little soot, or some light manure. This system would exhaust the soil of its alkalies to the greatest extent possible. Should it then come into the possession of a man of capital and experience, he may in a few years bring it into high condition without imparting to it a pound of potash or soda, though the course he would probably adopt would indirectly increase the available sources of those substances.

“ If grain crops, as I have endeavoured to show, can be grown at a cheaper rate by the production of meat, than by the direct action of artificial manures, the propriety of adopting the former course to its full extent becomes simply a question of capital. It would require five times as much capital to produce the same amount of corn by means of stock as could be produced by artificial manures. It is the same with the manufacturer who employs a high pressure or a double cylinder engine; with the former his capital invested is small, but the interest paid upon it, by the daily consumption of fuel, is very great, while with the latter his invested capital is large, and his daily interest comparatively small. The want of sufficient capital among so large a portion of our agriculturists cannot be sufficiently deplored in a national point of view. They imagine that the greater extent of land they can farm with a limited capital, the greater will be the interest obtained for it; by which means the amount of labour employed is reduced to the smallest possible extent. High prices have hitherto allowed a system of agriculture to be pursued, by which little more than the natural produce is obtained from the soil. But if the average price of corn should ever be reduced to the standard of other countries, a reduction of rent must take place equivalent to this diminution, or the decrease in the value of corn must be balanced by an increased average produced in the soil.”

*Exhausting and injurious Plants.*—As to our fifth division of plants, those which do not enter into the ordinary business of the farm or contribute to its reproductiveness, these are often excluded by express stipulation. Many of them are profitable and very exhausting; but as it would be vain to attempt to exclude by name all the injurious plants that might be grown,



the landlord must either rely upon a general proviso, such as that to be found in form of lease No. 2, not to cultivate in any manner which arbitrators shall decide to be injurious to the farm; or else stipulate that no plants other than those in general cultivation throughout the country as articles of ordinary farm produce, shall be grown upon the farm, without leave in writing of the landlord.

Upon the much-disputed point, of how far flax should be allowed to be grown.—“That flax impoverishes the soil,” Mr. Warnes says, “is a mere vulgar notion devoid of all truth. The best historical relations, and the verbal accounts of honest, ingenuous planters, concur in declaring it to be a vain prejudice, unsupported by any authority; and that these crops really meliorate and improve the soil.” Mr. Smith of Chitneys observes, “With respect to the course of crops to make the most advantage of clayey land, flax should be your first crop; but this I know by experience, many, nay I may say all landlords will argue against; but I have had the pleasure by experience to convince them that they are wrong, for by sowing flax and that being well attended to, your land is excellently prepared for wheat, your tenant has in the flax an excellent manure for his latter math, upon which his flax is laid; he has a rich supply of seed to feed all his cattle; he has abundance of labour for the poor; and at last has, from a good crop, from ten to fifteen pounds per acre to put into his purse, to enable him to be a good tenant and to give both land and landlord every satisfaction required (m).”

How far this eulogium may be justified I must leave practical agriculturists to decide; but Mr. Warnes admits that if the tenant be allowed an unlimited licence to grow flax, he should covenant to preserve the seed and consume it by cattle on the farm.

*Stipulations as to Culture, after Notice to Quit given.*—It is sometimes necessary, in contracts for a yearly tenancy, to restrict the tenant in the management of the farm after notice to quit given. The usual object of encouragement to enterprise and improvement does not here obtain. As soon as notice to quit has been given, the interest of the landlord and tenant

(m) Warnes on the Cultivation of Flax, p. 209.

is no longer one. The tenant may find it profitable to leave an unnecessary portion of his farm in summer fallow ; to sow an improper proportion of wheat with a view to his off-going crop ; to plough up grass lands which though not quite prohibited turf lands, yet would not be readily allowed to be ploughed up by an off-goer, or to do many other things which may disarrange the course of husbandry of the farm, and inconvenience his successor. The more liberal and wide the culture covenants are, the more necessary it is that the restrictions be stringent as to the management after notice to quit given. It is of course impossible here to discuss the numberless contrivances by which an outgoer may turn all the discretionary powers of culture allowed him to his own profit, and his successor's loss ; but in this, as in all other cases of like nature, where every individual inconvenience cannot be foreseen, a general stipulation will be found most effectual. The tenant should covenant that he will not in any way change the ordinary and previous course of cultivation of the farm, after receiving or giving notice to quit ; or do any act by which the succeeding tenant may be prevented continuing such course of cultivation, in as regular and profitable a manner as that in which it was conducted by the outgoer.

There are cases in which particular covenants under this head will be necessary : such as where it is intended to restrict the outgoer from ploughing, and sowing winter corn in the last year, after notice to quit given ; but these will depend upon the special object of the parties, the time of the determination of the tenancy, and the customs, so far as the contract adopts them, of the district.

*Covenants against assigning or under-letting.*—This is a covenant which should obviously never be omitted from an agricultural lease or agreement. This is not what is termed an usual covenant, and must therefore be specially stipulated for (n).

Such assignments only (without consent) as are the voluntary act of the lessee, amount to a breach of this covenant, and therefore the vesting of the term in the administrator of the lessee on his intestacy (o), or in his executor or devisee under

(n) *Church v. Brown*, 15 Ves. 258.

(o) *Crusoe v. Bugby*, 3 Wils. 234 ; 2 Bla. 766.

his will (*p*), is no breach. Nor will the covenant be broken by the marriage of a feme sole tenant (*q*), or by the vesting of the term in the assignees of a bankrupt (*r*), or in the sheriff under an execution (*s*).

Where this covenant forms a portion of a lease for years, it is of great importance that it be drawn so as to exclude assignment or underletting, not only by the lessee, but also by the lessee's executors, administrators, or assigns.

By the form of the covenant now generally used for a lease for years, the lessee is made to engage for himself, his heirs, executors, administrators, and assigns, that neither he, nor his executors, administrators, nor assigns, will assign, &c., without the leave of the lessor, his heirs or assigns, or his executors, administrators, or assigns, according to the nature of the reversion. Some doubt was formerly entertained, whether a clause restraining alienation by the executors, administrators, or assigns of the lessee, was not in itself repugnant and void in a lease granted to the lessee, his executors, administrators, and assigns; but that point has long been set at rest, and there is no more repugnancy in a lease to a man, his executors, administrators, and assigns, with a proviso or covenant restraining assignment without the lessor's licence, than in an estate to a man and his heirs, with a subsequent restriction to heirs of a particular description. The assigns must be understood to be such as, upon the whole taken together, the lessee may lawfully have,—viz., assigns with licence.

If the covenant be merely personal; for example, if the lessee covenant that he will not assign during his life; or, without confining the restraint to his life, that he (without naming his executors, administrators, or assigns) will not assign; the death of the lessee determines the engagement, and his representatives may dispose of the term without the lessor's licence.

If the covenant extend the restriction to the executors and

(*p*) *Horton v. Horton*, Cro. Jac. M. 690; and see 8 East, 185; *Cheer v. Smith*, 5 Taunt. 795; *Doe v. Bevan*, 3 M. & S. 353.

(*q*) *Anon.* Moo. 11, pl. 40.

(*r*) *Lear v. Leggett*, 1 Russ. &

*van*, 3 M. & S. 353.

(*s*) *Doe v. Carter*, 8 T. R. 57.

administrators of the lessee ; as, if he covenant that neither he nor his executors nor administrators shall assign, the executors and administrators will be restrained, at least at law, from assigning without licence, even for payment of debts. And it is the better opinion, that an administrator will be bound as an assignee in law, though the covenant be that the lessee, his executors, or assigns will not alien.

It appears, however, that equity will relieve against the forfeiture, where the assignment is for payment of debts (*t*).

As to how far the assigns of the lessee are bound, it has been held that assigns who take by process and operation of law are not bound, and therefore that the assignees of a bankrupt lessee may assign over without the permission of the lessor, notwithstanding the covenant expressly extends to bind assigns (*u*).

If a lease be granted on condition of forfeiture in case the lessee should alien to any other than A. B., and the lessee assigns to A. B., he, A. B., may assign over to whom he pleases (*x*). This doctrine however is not undisputed (*y*).

Where the lessee assigns, his whole interest passes to the assignee, who becomes personally liable to the covenants that run with the land, and the premises continue liable to the landlord's right to distress for arrears of rent.

Where the lessee grants an under-lease reserving a portion of the term, although but a day, the under-lessee is not personally bound by any of the covenants of the original lease, for there is no privity between the under-lessee and the original lessor ; but the land is not discharged, and the under-lessee is still liable by distress or eviction if the rent be in arrear, or a forfeiture be incurred.

Where there is a right of entry given for an assigning or underletting, if a person is found in the premises, appearing as the tenant, it is *prima facie* evidence of an underletting, sufficient to call upon the defendant to show in what character

(*t*) Platt on Leases, vol. ii. p. 265, and the authorities there cited.

(*u*) *Doe v. Bevan*, 3 M. & S. 353 ; *Wetherall v. Geering*, 12 Ves. 512.

(*x*) *Whitchocke v. Fox*, Cro. Jac.

398 ; 2 Bulst. 290 ; *Brummell v. Macpherson*, 14 Ves. 173 ; *Dumpon's case*, 4 Co. 120a ; and see Platt on Leases, vol. ii. p. 275.

(*y*) See Third Real Property Rep. 72, and p. 50.

such person was in possession, as tenant or as servant to the lessee (z).

Upon the expediency and practical operation of this covenant, I borrow the following remarks from Professor Low:—

“The rights of parties under the lease are determined in part by common law, and in part by the terms of the contract. The lease is usually granted to the tenant and his heirs, to be held by them during the stipulated time on the conditions laid down in the contract. In England the lease is generally granted to the tenant and his heirs and assigns [his executors, administrators and assigns], but excluding sub-tenants [without consent]. In Scotland not only sub-tenants are excluded, but assigns legal and voluntary, inferring that the lease shall go to the heir at law alone. This rigid destination of the lease by the practice of Scotland does not seem to be required for any end of real utility, and the practice of England is the more just and natural. The provision of the Scottish lease does not, as it is intended to do, secure to the landlord the choice of the tenant after the death of the original lessee; for, during the currency of a long lease, the farm may pass into the hands of distant heirs, of whom the landlord can know nothing, or into the hands of guardians or other legal managers unknown to him, or into those of the husbands of female heirs. Besides, there is this evil in the stipulation itself, that, on the death of the tenant, the lease must descend to the heir at law, so that the tenant has not the power of selecting the member even of his own family who shall succeed to him. But the preventing of a tenant from selecting the person who shall succeed to him in his profession may be the means of forcing the management of a difficult business on the individual of a family the least qualified for the duty; and the heir of a tenant may be, from various causes, unfit for the management of a farm. In practice, indeed, the system is attended with fewer real inconveniences than might be expected; and there is some advantage in having the eldest son of a family regarded as the heir of the lease, and trained accordingly to farming as a profession from his childhood. Although, however, few great practical inconveniences result from the condition when it is established by

(z) *Doe d. Hindly v. Rickarby*, 5 Esp. 2.

custom, it were better if it were so modified that the tenant had the power of devising his lease like any one part of his property.

"The excluding of sub-tenants is almost universal in the leases both of England and Scotland; but it scarcely ever can be the interest of a landlord to refuse his tenant, when he and his heirs are responsible for the fulfilment of the conditions of the lease, the power to sublet his farm; for, in such a case, the security of the landlord is increased by the guarantee of another added to that of the original lessee, and the sub-tenant may be expected to bring with him a fresh capital, and generally to begin a new set of operations, when those of the old tenant may have become languid. Yet the condition ought to be retained in leases as preventing subdivision, and persons from being introduced upon a property who from any cause may be objectionable, and checking the abuse of letting at a rent beyond the fair means of the farm to produce. It may be reasonably calculated upon by the tenant that a landlord's own interest will prevent his ever refusing power to sublet when the case requires it."

*Covenant to quit Possession.*—It is usual to insert in the lease, or in the agreement to stipulate for, a covenant that at the expiration of the term the tenant shall quit possession and peaceably surrender the premises. This, however, appears to be unnecessary except so far as it gives better remedy for damages occasioned by holding over; for, at the expiration of the term of the lease, or after lawful determination of the tenancy, no notice is required from either party (*a*). The landlord may peaceably re-enter on the premises without resorting to legal measures to recover possession (*b*); nor can the tenant maintain trespass against him for such entry (*c*), nor distrain his cattle put into the premises by way of resuming possession (*d*). The lessor may even break open the house to get possession, provided no one be in possession, but may not forcibly expel the tenant or any of his family (*e*).

(*a*) *Doe v. Stratton*, 4 Bing. 436;  
*Doe v. Smith*, 6 East, 530.

(*b*) *Turner v. Meymott*, 6 Bing.  
 158.

(*c*) *Newton v. Horland*, 1 Sco. N.  
 R. 490.

(*d*) *Taunton v. Costar*, 7 T. R.  
 431.

(*e*) *Hillary v. Gay*, 6 C. & P.  
 284; but see *Proviso for Re-entry*,  
*post*.

This covenant is, however, usually united with a further covenant as to the state in which the premises shall be surrendered; and several forms of it will be found among the precedents of leases.

*n. Construction of Tenant's Covenants.*—It may be convenient here to notice such of the principal decisions upon the construction of agricultural covenants and stipulations as have not hitherto found place in the order adopted in these pages.

*Cultivation.*—In *Hutton v. Warren* (*f*), it was held, that at common law it is not waste by the tenant, either wilful or permissive, to leave the land uncultivated. In order to oblige him to farm according to good husbandry there must be some contract, either express or implied, from the custom of the country.

In *Fleming v. Snook* (*g*), the Court held that a covenant in a farming lease for ten years not to sow the land with wheat more than once in four years, nor with more than two crops of any kind of grain during the same period of four years, will restrain the lessee from having more than two crops in any four years of the term, however taken.

In *Leibenrood v. Vines* (*h*), where a party agreed for a lease of two farms, with a condition that in the lease to be granted should be contained "covenants, clauses, and agreements for sowing and manuring thereof, and for disposing of the dung and straw, and quitting and yielding up the premises, agreeably to the manner in which the same had been and should be respectively sown, managed, and quitted, by the then present tenants thereof," it was determined that the intended lessee was not bound by the covenants contained in a former lease, the terms being, not that he should hold as those tenants held, but that he should manage the estate according to the mode and quit it in the condition in which they should have managed and quitted it respectively; that is, as the landlord himself should have permitted them to manage and quit.

*Manure.*—In *Hindle v. Pollitt* (*i*), the tenant of a farm gave his landlord a bond conditioned to be void if the tenant

(*f*) 1 M. & W. 466.

(*g*) 5 Beav. 250.

(*h*) 1 Mer. 15, and 719.

(*i*) 6 M. & W. 529.

should spend all the manure and compost then collected in the midden-stead or on any other part of the farm, and should not sell, cart, or carry away any dung, compost, or manure from the said farm. The tenant's stock having been sold by auction, the purchaser of two cows obtained permission for them to remain on the farm for a time, and one of them remained one week and the other five weeks, during which time the purchaser fed them from his own hay exclusively; he afterwards took away the manure made by them, and spread it on his own farm: this was held to be a forfeiture of the bond, the manure having been made and produced on and belonging to the farm. A covenant to the same effect would doubtless be construed in like manner.

In *The Duke of Roxburghe v. Robertson (k)*, it was provided in a lease in Scotland that the lessee, at the removal from the lands, should leave upon the ground all the dung and manure of the preceding year, but that the value thereof should be paid to him by the succeeding tenant, as the same should be ascertained by two neutral men, one to be chosen by each party, and that at no time should the lessee sell or give away any of the hay or straw of the farm, which should always be spent on the ground; it was determined, on appeal, that he was not entitled to sell or give away any of the hay or straw upon the farm at any time during the continuance of the lease, or at its expiration.

In *Beaty v. Gibbons (l)*, it was held that a covenant to leave manure on the farm, and sell it to the incoming tenant at a valuation, gives the outgoing tenant a right of onstand, so that he may maintain trespass against the incoming tenant who removes it before the valuation.

In *Dawson v. Baldwin (m)*, a lessee covenanted from time to time during the demise to put out, as manure, on every acre of the demised premises that should be broken up for tillage, twenty statute barrels of good burned rock lime; and the lessor covenanted that it should be lawful for the lessee, yearly, during the term, to cut and carry away a sufficient quantity of turf on and upon such part of the turf-bog at B. as the lessor

(k) 2 Bli. P. C. 156.

(l) 16 East, 116.

(m) Hay. &amp; Jo. 24.



should appoint for the purpose of burning lime to be laid out as manure on the demised premises. It was held that, as the lessee could not have the turf without the lessor's appointment, there was an implied covenant on his part to appoint the place from which it might be cut.

In *The Earl of Shrewsbury v. Gould*, it was held that a covenant by a lessee of limestone, at all seasons of burning lime to supply the lessor with lime at a stipulated price, imported a covenant that he would also burn lime at such seasons.

In *Richards v. Black (n)*, there was a covenant that the tenant should during the demise consume on the premises, for the improvement of the same, all the hay, straw, &c., which should grow or be made upon the premises; but in case he should take or sell off any part thereof, which he was at liberty to do, then that he should for every ton of hay or straw taken or sold off, bring back a certain quantity of manure within a certain space of time. It was held that this is a covenant in the alternative.

In an action for breach of such covenant, the declaration set forth only so much of the covenant as related to the consuming the crops on the premises, omitting to traverse, the tenant having brought on the substituted quantity of manure, and assigned for a breach the selling off and carrying away certain crops without converting the same into manure; it was held that the declaration was defective, and that the defendant was entitled to recover on a plea thereto of *non est factum*. The defendant having also, by his pleas, traversed the breach assigned, it was also held that the judge at the trial did right in refusing to allow the declaration to be amended.

In *Smith v. Chance (o)*, the tenant was bound either to consume the hay on the demised premises, or for every load of hay removed to bring two loads of manure. On quitting possession of the premises the outgoer sold part of a rick of hay then left standing to a purchaser, without mentioning his liability to bring manure. The incoming tenant refused to allow the purchaser to take away the hay until the manure was brought. After an interval of a month, during which

(n) 6 C. B. 437; S. C. 12 Jur. 963.

(o) 2 B. & Al. 753.

time the hay had been considerably damaged, the incomer consented that it should be removed. The purchaser of the hay however then refused to accept or pay for the same. The outgoer brought his action for the price. Held, that although the bringing on the manure was not a condition precedent to the carrying off the hay as between the landlord and tenant, still, that after the tenant had quitted possession of the premises, the succeeding tenant had a right to refuse to permit the hay to be removed till after the manure was brought on; and that as the vendor had not enabled the purchaser to remove the hay in the first instance, he was not entitled to recover the price.

*Folding*.—In *Webb v. Plummer* (p), it was held that a clause in a lease, that the lessee shall at all times during the term pen or fold his flocks of sheep, which he shall keep upon the demised premises, upon such parts where the same have been usually folded, under a penalty for neglect, binds the tenant to keep as well as fold a flock.

*Breaking up of grass lands, &c.*—In *Aldridge v. Howard* (q), where a lease contained a covenant for payment of an additional rent of 100*l.* a year for every acre of the pasture land demised which the lessee should during the term plough, break up, dig, use, or convert into tillage, or for brick earth, or for any other purpose whatever, it was determined that the question, whether using the land as a race-course and ground for training horses was a breach or not, was one of fact for a jury, and not one of law for the Court.

In *Flint v. Brandon* the lessee covenanted not to dig gravel, brick earth, &c., out of any part of the demised premises without the consent of the lessor, or paying him 10*s.* per load, except what should be dug out of two acres, part of the premises demised. By a memorandum indorsed on the lease before execution, it was agreed that it should be lawful for the lessor to let to any person for the same purpose of making bricks or tiles only, any part of the demised premises, he, the lessor, allowing to the lessee 3*l.* for every acre which he should so let, and it was further agreed that it should be lawful for the lessee to break up and dig for gravel any part of

the demised lands, he covenanting to pay the lessor 20*l.* for every acre he should break up and dig, and to make good the same at or before the expiration of the lease. It was argued, that the lessee might dig for gravel in the two excepted acres without the lessor's consent or any obligation to make the ground good; but it was held that the memorandum was a new agreement, and embraced the ground excepted by the lease, and bound the lessee to make good any part of the two acres which he should break up.

*Way-going crop.*—In *Strickland v. Maxwell* (s), a lease contained a provision that in case the tenant should observe and perform the covenants in the lease, (one being for the payment of rent,) and should peaceably quit on notice, he should be entitled to a way-going crop to be taken from certain specified parts of the lands demised, and that the crop should be left for the landlord or his incoming tenant at a valuation. It was decided that this clause did not give the tenant right of possession as against the landlord after the determination of the tenancy, but that the tenant at most could only go on the land for the purpose of a way-going crop.

*Entry to sow seeds.*—In *Hughes v. Richman* (t), it was held that if a lessee covenant to permit the lessor to enter on such part of the demised premises as, in the last year of the term, shall be sown with barley and oats, and to sow therewith so much clover as the lessor shall think fit, he is not bound to inform the covenantee of an intention to sow barley and oats. The covenantee, being the party to be benefited, must use due diligence in ascertaining the fact.

*Thirlage.*—In *Hamley v. Hendon* (u), a covenant by a lessee to grind all his corn and grain that he should spend in domestic use at the mill of his lessor's manor, is not confined to such corn as shall grow upon the demised premises.

(s) 2 Cr. & M. 539.

(t) Cowp. 125.

(u) 12 Mod. 327.

SECT. 7.—*Covenants by the Landlord.*

*a. Covenant for quiet enjoyment.*—The word “demise” in itself implies a covenant for title and quiet enjoyment, but this implied covenant has in practice yielded to an express covenant for quiet enjoyment. The express covenant has advantages which it is unnecessary here to detail. It is true that the usual qualified covenant for quiet enjoyment does not protect the lessee from an eviction by any one having a title paramount to that of the lessor (*x*); but then on the other hand the implied covenant arising upon the word demise does not bind the heir so as to render him liable for breaches committed in the ancestor’s life although the heir is liable if he himself evict the lessee. The implied covenant ceases with the estate of the lessor, so that if he be only tenant for life and the lessee be evicted by the remainderman the lessee would be without remedy (*y*), whereas the usual express covenant guarantees the enjoyment of the estate during the whole term granted (*z*). The expediency of the express covenant is especially shown in the case of *Smith v. Pocklington* (*a*), wherein it was held that an implied covenant cannot arise on the demise of a party who has only an equitable estate.

The covenant for quiet enjoyment applies to the estate or title only. Therefore it is no breach of this covenant if the lessor should afterwards come upon the farm and beat the lessee (*b*), or if he take any other means of annoying him personally, or if he trespass, as by hunting, &c. (*c*), so that he does not interfere with his possession of the estate.

In the recent case of *Blatchford v. The Mayor of Plymouth* (*d*), a mill was demised with the stream of water in the

(*x*) *Nokes’ case*, 4 Co. 80 *b*; *Hart v. Windsor*, 12 M. & W. 68, 85; *Shep. Touch.* 184.

(*y*) *Newton v. Osborne*, Sty. 387; *Andrews’ case*, 2 Leon. 184; *Cro. Eliz.* 214; *Page v. Brown*, 3 Beav. 36.

(*z*) *Adams v. Gibney*, 6 Bing. 656; *Williams v. Burrell*, 1 C. B. 402.

(*a*) 1 Cr. & J. 445; and see *Hinde v. Gray*, 1 Sco. N. R. 123.

(*b*) *Penn v. Glover*, *Cro. Eliz.* 421; *Wichcot v. Nive*, 1 Brown. & G. 81.

(*c*) *Lloyd v. Tomkins*, 1 T. R. 671.

(*d*) 3 Bing. N. C. 691.

least belonging to the lessors, except so much of the water as should be sufficient for the supply of persons whom they had then already contracted or should thereafter contract to supply, provided that such quantity should be left as should be sufficient to supply the mill for twelve hours a day. The lessors covenanted that the lessee should enjoy without interruption of the lessors or of persons claiming by their act, means, consent, default, privity, or procurement. The supply of the persons with whom the lessors had already contracted reduced the water below a twelve hours' supply. It was held that the lessors did not guarantee a supply of water for twelve hours a day, and that diversions occasioned by contracts entered into previously to the demise were no breach of the covenant for quiet enjoyment.

A breach of this covenant by a partial eviction does not discharge the tenant from his liability to covenants other than that for the payment of rent.

*Morrison v. Chadwick* (e) was an action by a landlord against his tenant for breach of promise to use the demised premises in a tenantlike manner during the tenancy; the case came before the Court upon demurrer, but it was held that though eviction from part of the premises created a suspension of the entire rent during the continuance of the eviction until the tenant enters and resumes possession, it did not, even along with the relinquishment of the residue, put an end to the tenancy or relieve the tenant from the other covenants besides that for payment of rent.

The covenant for quiet enjoyment will run with the land for the benefit of assignees, and may be either general or qualified to the acts of the lessor and persons claiming under him. The usual covenant is of the latter character; but the lessee unless he is well satisfied of the title of his lessor would be safer with a covenant for quiet enjoyment against all persons whomsoever. In farming leases where the lessee seldom has any opportunity of investigating the lessor's title, it would appear that it is no more than equitable that the landlord should enter into the general covenant. This covenant does not extend to guarantee the lessee against trespassers and

wrong doers (*f*), but only against lawful evictions or disturbances.

Sometimes, however, the covenant comprehends all persons "having, or claiming, or pretending to have or claim, &c.," and in this case a claim of right will create a breach of the covenant (*g*).

This covenant is usually drawn in the following form:—  
 "And the said [lessor] doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said [lessee], his executors, administrators, and assigns, that he and they paying the said rent of £. in manner aforesaid, (or paying the said rents hereinbefore reserved,) and observing and performing the covenants, provisoes, and conditions, on his and their part to be observed and performed, [but these words will not form a condition precedent: *Dawson v. Dyer*, 5 B. & Ad. 584; see however *Ireland v. Bircham*, 2 Bing. N. C. 97; 2 Sco. 207,] shall and may peacefully and quietly possess and enjoy the said premises, with their appurtenants for and during the said term hereby granted, without any denial, interruption, or disturbance whatsoever, of, from, or by him the said [lessor] his heirs or assigns, [or if the lessor be a leaseholder "his executors, administrators, or assigns,"] or any other person or persons whomsoever [or if the covenant be a qualified covenant, add, "lawfully claiming or to claim any estate, right, title, or interest, in, to, or out of the said premises, by, from, through, under, or in trust for him, them, or any or either of them"].

If the tenant intend to cover himself from eviction by a *general* covenant to quiet enjoyment he should stipulate for it in his agreement, for it is not understood to be a usual covenant.

*b. Pre-entry.*—The stipulation that the tenant shall enter to plough before the commencement of his tenancy is not very usual in agreements or in leases, for the privilege has very often been enjoyed before the instrument was executed. Sooner or later, however, every landlord learns by experience that it is a golden rule never to let a tenant into possession until he has signed the agreement or executed the lease, and

(*f*) *Vaugh.* 122. (*g*) *Southgate v. Chaplin*, Com. 230; 10 Mod. 383.

paid or given security for his incoming charges. In such case the tenant has a right to have this stipulation expressed in the agreement. It is perhaps one of the very few points which are conveniently settled by the custom of the country, but as the operation of the custom is expressly excluded by the forms which are hereafter offered as precedents, it is necessary that such as are intended to be adopted be set forth in the lease (*h*).

In treating of the habendum I have already adverted to the different periods of entry in common use; but Professor Low has some remarks upon the same subject which may be studied to advantage.

“With respect to the period of entry to a farm, this is generally established by the custom of districts. These customs, even in the same district, are frequently not founded on any uniform principle, and are often the cause of much embarrassment in the management of landed property, but all the conflicting times of entry may be reduced to two general classes, and by keeping the real ends of each steadily in view, a great mass of useless conditions may be expunged from the leases of the country.

“The entry to a farm may either be in the latter part of autumn, that is, after the corn crop of the year has been reaped; or it may be in spring or the early part of summer; that is after the corn crop of that year has been sown but not reaped.

“The entry at the fall of the year may be at Michaelmas, the 29th of September, or better at Old Michaelmas, the 11th of October, as is usual in England, or at Martinmas, the 11th of November, as is applicable to Scotland, where the harvests are later. In either case the corn crop of the year has been reaped when the incoming tenant takes possession of the premises, and he is enabled to begin at once the ploughing of the land in stubble, and all the other operations necessary for preparing the land for the crops of the following season.

“But at the period in question, it will be observed, certain labours have already been performed by the tenant still in possession, as working and manuring the land, which had been in

(*h*) See Form of Lease from Year to Year, No. 29.

fallow in the preceding summer, and several other operations of which the new and not the old tenant derives the benefit, and for all which cases certain provisions require to be made, as will be explained in the sequel.

“The spring entry differs from the autumnal entry in the condition in which the farm is when the new tenant takes possession. The way-going tenant has then sown the corn crop of his last year, usually called his way-going crop, and he removes at the stipulated term from all the premises, with the exception of the land on which his corn crop has been sown. He thus gives up, at the term of removal, the buildings of the farm, which he does not now require, having sown his crop, the land which is in grass, which the new tenant stocks, the land which is to be in summer fallow, and such crops as are to be worked during the following summer, called fallow crops; and he removes from the land which had been sown with corn as soon as the crop is reaped and carried from the fields. The usual period of entry to the houses, to the grass land, and to the land which is to be in summer fallow, and what are termed fallow crops, is, in the southern and midland counties of England, at Lady-day, the 25th of March; and in the north of England and Scotland at Whit-Sunday, the 15th of May, or less properly, in certain cases, at Old Whit-Sunday, or the 26th of May. This method of entry, which is the most common of any other, requires a peculiar class of provisions to suit the condition of the farm, and the position of the two tenants, when the one enters into possession and the other removes.

“There are thus then two distinct periods at which leases may terminate, and a new tenant receive possession, the one at the fall of the year, and the other in spring. The former may be deferred even until Candlemas in the following spring, but still the principle of entry is the same; the previous crop of corn has been reaped by the way-going tenant, and the next one is to be sown and reaped by his successor. Great confusion has been introduced into the leases of England, from conveyancers not being aware of the nature of these different periods of entry, and of the peculiar conditions of the lease which each requires.”

*c. Outgoing Allowances.*—The stipulations by which the



landlord binds himself to indemnify the tenant for expenditure from which he has not reaped the fruit, are at this time the subject of anxious interest both to landlords and tenants. The claim to be legally entitled to allowances for buildings, drainage, fencing, and artificial manures, is almost entirely new; rights to compensation for dressings and tillages, although not new, have been various and partial. The tenant interest, speaking by enthusiastic or unthinking men, has sometimes made assertions upon the subject which are inconsistent with all property in the land (i), and landlords, with some justice, alarmed by the doctrines thus propounded, have generally been unwilling that any right should arise upon their estate which may at any time come into conflict with their own.

It may not, therefore, be out of place here to take a view of the actual existing system of tenant right.

(k) Ordinarily the period over which the current operations and expenses are held to run is limited to the last year of the tenancy, but in some instances it extends to the unexhausted

(i) Take for instance the evidence of Mr. Mogg, Agr. Cus. Rep. p. 337:—

“Q. Should the tenant have a right of putting up buildings without the consent of the landlord?”

“A. If sufficient parties were put in by the landlord tending to prove that those buildings were necessary, *then I would put him out of the question.*”

“Q. Then you would not leave the landlord the option?”

“A. I would give him notice that I should like to put up such and such buildings, and let him name an arbitrator, and then, if he did not, I would have power to name an arbitrator in another sort of way. I would let him have a discretion of that sort, but I should not like him to put his veto upon it.

“Q. What discretion would you give him?”

“A. I would let him speak through his arbitrator, and he should be compelled to do it if the arbitrator decided that it was an improve-

ment. If the arbitrator decided that it was an improvement, whether the landlord like it or not, the tenant should be authorized to do it.

“Q. What period of years should the right to be paid for the buildings run over?”

“A. Twenty to twenty-five years.”

Mr. Kilby (p. 206) thinks the landlord ought also to be compelled to give his tenant a right to drain and manure, and fix the cost upon the land; and many other opinions of a similar character will be found scattered through this very large blue book.

(k) I am indebted for this view of tenant right (so far as it relates to manures and acts of husbandry) to Mr. Pickering, whose great experience in all parts of the kingdom, while acting for the Ecclesiastical Commissioners, and other public bodies and owners of large estates, renders his opinion especially valuable.

operations of the whole current course of husbandry. Recently, in Lincolnshire, and some parts adjacent, it has grown to be applied to all unexhausted tenants' improvements. Sometimes, as in the Weald of Kent, Surrey, and Sussex, the whole growth of underwood is the property of the outgoing tenant, but to be left on a valuation.

On general principles the particulars included in an outgoing tenant's claims would depend in a large measure on the period of the year at which his tenancy terminates, on the value of the soil, and other local circumstances: thus, as to a Michaelmas holding, having reaped the product of the next preceding year's culture, the tenant's demand in respect of work performed might not extend beyond the fallows, (either naked or for turnips,) and the manuring of them, and the artificial grass seeds sown at the preceding spring. If a Martinmas holding, to these would be added the acts of husbandry and seed for the ensuing wheat crop; if Candlemas, the breaking up of the fallows for the following year might be further added; and at Lady-day the breaking up of the lands for spring sowing.

But in fact the practice does not appear to be regulated by any general rule. Not only do usages vary between county and county, or soil and soil, but often in the same county, and on like soil, very different practices are found to prevail.

The compensation for the like claim is often rendered in various ways. In some districts, as in Bedfordshire, Huntingdonshire, and parts of Cambridgeshire, the land to be fallowed in the last year of a tenancy, is not unfrequently given up for cultivation to the ensuing tenant, either with or without payment of rent, together with the use of a portion of the stabling and dwelling-house for the accommodation of his teams and workpeople. In the north midland, and partly in the northern districts, the outgoing tenant has a way-going crop, that is, after his tenancy has expired he is entitled to a portion or the whole according to circumstances, of the crop for which in the last year he had prepared the tillages. Sometimes he pays the rent and taxes of the land on which the growing crop is produced, and sometimes the incoming tenant pays them; and the proportion of the former in the

outgoing crop is varied by this contingency. In some districts, as in South Wales, the whole crop and manure is taken away by the outgoing tenant.

An actual money payment only for the seed sown, the acts of husbandry and labour, is perhaps the least prevalent practice; where this exists the rent and taxes of the past year are sometimes paid and sometimes they are not. A district comprising the counties of Hertford, Bedford, the east of Buckingham, the west of Cambridge, Northampton, Rutland, Warwick, and Leicester, are those in which the outgoing tenant's claims are the lightest; in Surrey, the Weald of Kent, and the west riding of Yorkshire, they are heaviest, in reference to the actual available value of them to the landlord or incoming tenant.

The Suffolk tenant right is a mean of these. The usage is not uniform throughout the county, but the best established practice is the payment of the following, the tenancies for the most part being Michaelmas holdings:—

1st. The husbandry rent, and parochial rates of the fallows, whether naked or sown with green crop.

2nd. The value of manures applied to the same with the carting, spreading, and labour.

3rd. Of turnips, or other roots, the seed, sowing, and hoeing.

4th. The seeds and sowing of the clover and artificial grasses.

5th. The herbage of these to Michaelmas, together with any herbage remaining on the old clovers or grass lands.

6th. The saleable value of any dung, the product of the straw and hay of the next preceding harvest, which may not have been applied to the fallows.

7th. The hay of the grass lands in course to be mown, and the hay of a proper proportion of the clovers and artificial grasses—usually held to be one-half.

8th. The straw and chaff of the current year's crop, is, like the clover, the property of the outgoing tenant, but is left to the incoming tenant in consideration of his threshing and taking to market the corn of the outgoing tenant.

In Bedfordshire, and parts adjacent, not unfrequently the incoming tenant enters on the fallows at the preceding Lady-

day, paying the rent and taxes, and having the use of part of the premises. Should the outgoing tenant make the fallows, he, as a rule, is entitled to labour, rent, and taxes; and if he has led any dung on to the fallows, to the cost also of leading and labour: but if he has sown turnips, then he has only the eatage of the crops. When he has folded sheep from other lands upon his fallows, he is entitled to a valuation of the folding. He has the use of the barns, and part of the house and stables, to enable him to thresh and carry out his crop, and that of the yards for consuming the straw—usually until Old May-day.

In Surrey, the Weald of Kent, and south of the river Aire in Yorkshire, besides the payment of the fallows and manures of the season, half the cost of the tillages, and half the cost of the manurings of the next preceding fallow year are due. Some modification of the tenant right of the respective districts results from a variation in the period of the determination of the tenancies. In the West-riding the holdings are generally to Candlemas; in Surrey, and parts adjacent, they are either to Lady-day or Michaelmas.

The ploughings allowed in a fallow are seldom less than three or more than five; the several ploughings are valued at from 8s. to 14s. each, according to circumstances. A fair and necessary number of harrowings, draggings, and rollings, are included at a proportional value, as is also the manual labour necessarily employed, in clearing the land from weeds or couch. The leading manure and spreading the same, are estimated in like manner.

The practice of each of the districts specified will be pretty well exemplified by the following table—showing in each district what as a rule would be included in a valuation of tenant right on a four-field turnip course of husbandry. The charges entered in the respective columns under the names of the districts, indicate only, that in such districts the article enumerated is the subject of charge. They are put, not at the actual value, but in each case at the same assumed amount, to show what would be the total relative amount in the respective districts upon the same scale of valuation: it will be understood that there may be a somewhat different scale of estimate in every district, and even in the same

district under different circumstances. Of course the period assumed is the year of the completion of the course.

Particulars to which tenant-right claim extends.	Bedfordshire and parts adjacent.	Suffolk.	Surry and parts adjacent.	West Riding of Yorkshire.
<i>On a 4-field Turnip course of Husbandry.</i>	£ s. d.	£ s. d.	£ s. d.	£ s. d.
I. FOR TURNIP SEASON, 1 Acre.	£ s. d.			
Half-dressing (manuring of previous wheat crop) . . . . .	1 13 0	.. .. .	1 13 0	.. .. .
Ploughing, harrowing, dragging, rolling, seeds and labour . . . . .	3 10 0	3 10 0	3 10 0	.. .. .
10 loads of manure, loading and spreading . . . . .	3 17 6	3 17 6	3 17 6	.. .. .
Rent, tithe rent-charge, and parochial rates . . . . .	3 5 0	3 5 0	2 5 0	.. .. .
	11 4 6			
Deduct half-value of turnip crop . . . . .	1 15 0			9 9 6
The crop * . . . . .	3 10 0			
II. BARLEY SEASON, 1 Acre.				
Half-dressing (manuring of turnip crop) . . . . .	.. .. .	.. .. .	1 18 9	.. .. .
Half-dressing (manuring and husbandry) . . . . .	.. .. .	.. .. .	2 10 0	3 13 9
Dressing by feeding of turnip crop . . . . .	.. .. .	.. .. .	0 15 0	.. .. .
Young clover, seed, sowing and labour . . . . .	0 15 0	0 15 0	0 15 0	0 15 0
Herbage of young clover at Michaelmas . . . . .	.. .. .	0 10 0	.. .. .	.. .. .
III. ON CLOVER SEASON, 1 Acre.				
Half-dressing by turnip feeding . . . . .	.. .. .	.. .. .	1 5 0	.. .. .
Clover, hay, on half crop (½ acre, 112 cwt. @ 2s. 9d.) . . . . .	.. .. .	1 13 0	.. .. .	.. .. .
Clover, hay, 2nd crop (½ acre, 6 cwt. @ 2s.) . . . . .	.. .. .	0 12 0	.. .. .	.. .. .
Eddish at Michaelmas, on whole crop—1 acre . . . . .	.. .. .	0 10 0	.. .. .	.. .. .
IV. IN WHEAT SEASON, 1 acre.				
8 Loads of dung per acre, loading and spreading . . . . .	.. .. .	.. .. .	3 3 0	.. .. .
Clover, ley . . . . .	.. .. .	.. .. .	1 10 0	.. .. .
Rent and taxes, half-year . . . . .	.. .. .	.. .. .	1 3 6	.. .. .
Ploughing, pressing, harrowing, seed, sowing and labour . . . . .	.. .. .	.. .. .	1 17 6	.. .. .
Value of crop, 32 bushels . . . . .	29 12 0			
Deduct rent and taxes . . . . .	3 5 0			7 7 0
On GRASS-LAND, 3 acres.				
Half-dressing:—8 loads of dung applied to mowing land, for which only one crop taken, 1 acre, (6 loads @ 3s. 6d.) . . . . .	.. .. .	.. .. .	1 3 8	1 3 8
Hay on land usually mown, 1 acre, 20 cwt. @ 8s. † . . . .	.. .. .	3 0 0	.. .. .	.. .. .
	£ s. d.			
Hay on whole extent, 3 acres, 2½ loads @ 54s. 6 15 0	6 15 0			
Deduct 2½ loads of dung, being 1 load per load of hay, @ 5s. 6d. per load . . . . .	0 13 9			
Eddish at Michaelmas . . . . . (3 acres)	.. .. .	1 0 0	6 1 3	.. .. .
GROWING UNDERWOOD.				
Half an acre . . . . .	.. .. .	.. .. .	3 0 0	.. .. .
THE FARM-YARD AND HOMESTEAD.				
Excess of dung not applied to turnip crop, 2 loads . . . . .	.. .. .	0 11 0	.. .. .	.. .. .
Dung, 10 loads at 5s. 6d. . . . .	.. .. .	.. .. .	3 15 0	3 15 0
Straw stacked, 1 ton . . . . .	.. .. .	.. .. .	3 0 0	3 0 0
Arable, 4 ac.: Grass 2 ac.: Wood ½ ac.; Total 6½ ac. . . . .	4 5 0	18 3 6	39 4 9	27 3 6
Hovels, frames, and tenant's fixtures in every case are at their value as fixtures.				

\* If naked fallow, the claims in this district would be ploughing, &c. £3 10s.; leading and spreading manure, £1 5s.; rent and taxes, £3 5s.

† Unless by special agreement, the hay would be sold by the outgoing tenant: a load of dung is required to be brought to the farm for every load sold, either of hay or straw.

It is probably necessary to repeat, to prevent mistake, that the above are only for exemplification of the principle of

valuation, and not intended to indicate otherwise than approximately either amounts or prices ; these it cannot fail to be understood will vary in each case.

An analysis of the particulars will make it apparent that the higher claims, in any cases over any others, have to a considerable extent their equivalents in value rendered. Thus, in Suffolk, the purchaser (as the landlord or incoming tenant may be called) has the clover, hay, and turnips fit for his use ; which in the Bedfordshire district the outgoing tenant has the opportunity of consuming for his own profit in the farm-yard, as, though his term expires at Michaelmas, he retains it, as he does also a part of the dwelling-house, until the subsequent May-day. Or, again, the purchaser in Surrey or Yorkshire has the benefit of the wheat crop, which the outgoing tenant has cultivated and sown ; whilst in the first-named district the incoming tenant cultivates for and sows his own wheat. The most serious difference between the valuations of Suffolk and those of Surrey and Yorkshire is in the half-dressings and half-tillages prevailing in the latter : these are very onerous, and from the difficulty of their verification very objectionable.

The Suffolk practice is undoubtedly the preferable one. It induces the greater care in the preparation of the manure, and economy in the preservation of it : it preserves the young seeds and grass lands from injury by overstocking, and it secures the value of the rent from an outgoing tenant to his landlord, without encumbering his successor by his laying out of a large portion of capital in an unproductive state to the end of his term. In the Bedfordshire district, the incoming tenant, on entering, often finds himself without manure for the succeeding crop ; whilst in the district where the half-dressings and half-tillages prevail he is called upon to pay largely for that for which there is nothing to be seen, and for which in general he looks in vain for a profitable return, and is only repaid it without interest or profit when in his turn he again makes the like claim on his successor.

The Suffolk practice, therefore, is that to which the stipulations of the agreement or lease should be assimilated, so far as the habits of the farmers of the district and the circumstances of the parties will allow.

We have hitherto said nothing of more permanent improve-

ments which enter now very largely into the question of tenant right. Buildings, machinery, draining, fencing, and artificial manures are items of tenant right which have only recently become matters of discussion; upon which the most various opinions are held, and upon which it is not perhaps possible that any unvarying rule can be laid down. The points to be ascertained undoubtedly are—How much of the tenant's expenditure was for the permanent benefit of the farm; and what duration of enjoyment of his tenancy will return him that outlay with a reasonable profit. The first can only be ascertained by the previous consent and supervision of the landlord, or by the subsequent judgment of skilled valuers. The second may be roughly estimated by a general scale, such as that twenty years' enjoyment will return the cost of buildings, machinery, and fencing; that six years' enjoyment will return the cost of superficial draining, and ten years that of deeper drains; that three years will pay for guano; and that the half of the last, and one-fourth of the penultimate year's bill, will equal the unreturned expenditure upon oil-cake. But the value and the duration of such works must be subject to variations that no general rules can reach; and in truth, we find that throughout the volume of evidence which the House of Commons has published, scarcely any two of the eminent agriculturists who were examined agree as to the exact term at which buildings, machinery, fencing, drainage and manures, will have returned the tenant his expenditure. These are points upon which the parties must in each instance make their bargain, having all the circumstances before them. It is the interest of the landlord who, if he has confidence in his tenant and does not intend to turn him out, will at last have his land permanently improved by the requited enterprise of the farmer, to be liberal: but it is always best to leave as little as possible to the valuation, and to lay down in the agreement the principles upon which the valuers shall proceed.

It must be remembered, however, that although the hindrance of necessary improvements will decrease the productiveness of the farm both to landlord and tenant, yet that a very large tenant right will be found an almost equal disadvantage: for it will contract the number of customers for his land, and

will, perhaps, render it inconvenient to him to turn out a tenant who may even be pursuing a most injudicious course of husbandry.

In all stipulations for compensation for unexhausted improvements, except perhaps in the case of artificial manures, the previous consent of the landlord should be required, or a veto should at least be reserved to him; this consent should comprehend the cost as well as the work itself, and there are few cases in which it is safe to dispense with a controlling power over the execution as well as the expenditure. That being done, the settlement of the duration of enjoyment to be guaranteed or compensated for, can be estimated by the parties and readily expressed in a stipulation of the agreement. Several forms for this purpose will be found in the precedents hereafter given (i).

It may, however, be expected, that I should here produce some model scale of allowances. Opinions differ so much that I have found it impossible to construct any scale which will meet with universal approval; although several that are now in use will be found among the precedents. The best which I have met with is that which the courtesy of the Earl of Yarborough enables me to subjoin. It extends to all the more ordinary heads of expenditure, although not to buildings nor to drainage done at the sole cost of the tenant. This schedule was formed by his lordship after extensive and careful inquiry, and is a mean of the very various answers and opinions which he received in reply to his queries upon this subject.

It is as follows:—

1. *For Draining*.—When the landlord has found tiles, and the tenant has done the labour, if done within twelve calendar months before the end of the tenancy, and no crop has been taken from land after the draining thereof is completed, the whole cost to be allowed. If one crop has been taken from such land, three-fourths of the cost of the labour to be allowed, and so on, diminishing the allowance by one-fourth for each crop taken, but this allowance to be made only when

(i) See *post*, Common Practical Forms, No. 1; Miscellaneous Stipulations, No. 118 to 128; and Form of Leases, No. 2; and Special Precedents, Nos. 1, 2, 9, 11, 12, and 14.



the work is well and properly done by the tenant, to the satisfaction of the landlord or his agent expressed in writing.

2. *For Marling or Chalking*.—If done within twelve calendar months before the end of the tenancy the whole cost to be allowed; for that done in the previous year seven-eighths of the cost to be allowed, and so on, diminishing the allowance by one-eighth for each year that shall have elapsed since the marling or chalking.

3. *For Lime* used within twelve calendar months before the end of the tenancy, if no crop has been taken from the land limed in that year, the whole cost including labour to be allowed. If one crop has been taken from such land, four-fifths of such cost to be allowed, and so on, diminishing the allowance by one-fifth for each crop taken from such land.

4. *For Claying* on light land. A similar allowance to that for lime.

5. *For Bones* used within twelve calendar months before the end of the tenancy, two-thirds of the cost if used dry, and one-half if dissolved in acid, to be allowed, and for those used in the previous year, one-third of the cost if used dry and one-fourth if dissolved in acid, to be allowed.

6. *For Guano and Rape Dust* used within twelve calendar months before the end of the tenancy, for turnips or other green crop, two-thirds of the cost to be allowed.

7. *For Oil-cake* given to cattle and sheep, one-third of the cost price of that so used within twelve calendar months before the end of the tenancy, and one-sixth of the cost price of that so used in the previous year, to be allowed.

8. *For Linseed* given to cattle and sheep, one-fourth of the cost price of that so used within twelve calendar months before the end of the tenancy, and one-eighth of the cost price of that so used in the previous year of the tenancy, to be allowed.

9. *For Ashes or Town Manure* purchased and used for the turnip or rape crop sown within twelve calendar months before the end of the tenancy, one-half of the cost price to be allowed.

10. The word "crop" includes turnips, rape, or any other marketable produce of the land as well as corn. When the tenant is entitled to a following or waygoing crop, such crop, or the year in which it is reaped, shall be taken into account

in ascertaining the claims of the outgoing tenant to the foregoing allowances, in respect of the land upon which such crop is grown.

11. At the end of the tenancy the tenant shall be paid by the landlord or the incoming tenant the value of leading out manure and other labour done with the approbation of and for the sole use of the landlord or the incoming tenant, and the cost of all seed and of the labour of once ploughing and of harrowing and sowing the land then sown with wheat in due course after seeds or clover or after any other crop when such wheat follows in due course according to the regular practice on the farm sanctioned by the landlord, and the value of all labour properly bestowed on clay land summer fallowed (when such land has been worked in a good and husbandlike manner, but not otherwise), and of the seed and labour of sowing such clay land, and also the cost price of and the labour of sowing all grass and clover seeds sown within twelve calendar months before the end of the tenancy; but the tenant shall not stock the land sown with grass or clover seeds after the first day of November preceding the end of the tenancy, nor shall he stock the land so sown with any other animals than sheep, or pigs properly ringed.

The above allowances to be ascertained by two arbitrators; one to be appointed by the landlord or the incoming tenant, and the other by the outgoing tenant, or by an umpire to be appointed by the arbitrators before they begin to act.

#### SECT. 9.—*Of the Mutual Covenants.*

Besides the covenants which bind the landlord and the tenant to their respective duties, the lease or agreement commonly contains some stipulations upon matters of convenience, common to both parties, and by which both are equally bound. These are for the most part special in their character, and they are not unfrequently thrown into the form of a proviso or condition; but the mutual covenants that provide for arbitration and valuation are so frequent and important, that they require some notice.

*To refer Differences to Arbitration.*—It is not uncommon to provide in leases and in agreements, that if any dispute

should arise between the parties respecting the subject-matter of the contract, such disputes shall be settled by arbitration. Sometimes the provision is to refer to persons thereafter to be appointed by the parties, sometimes to one or more parties named in the instrument. But such a covenant or agreement will be no defence to an action at law, or a suit in equity. In *Thompson v. Charnock* (k), Lord Kenyon said, "It has been decided over and over again, that an agreement to refer all matters in difference to arbitration, is not sufficient to oust the courts of law or equity of their jurisdiction;" and a court of equity will not decree specific performance of an agreement to refer (l).

*For estimating Value of Outgoer's Interest.*—Another common and very necessary proviso is, that all outgoing allowances shall be ascertained by the valuation of two valuers, one to be chosen by each party; and in case of their disagreement, then by an umpire to be appointed by the arbitrators, before they enter upon their valuation. Several forms of this proviso will be found among the precedents (m): but it may be convenient to note the most important decisions upon this subject.

*Request must be made to appoint Arbitrator before Action brought.*—In *Lattimore v. Garrard* (n), the declaration in assumpsit stated, that, in consideration that the plaintiff had become tenant to the defendant of a farm, upon the terms that if the plaintiff should receive from the defendant notice to quit, and should have made expensive improvements upon the farm, for which the subsequent crops should not have compensated the plaintiff, the farm should, on the determination of the tenancy, be looked over by two persons, one to be appointed by each party; and that the persons so appointed should determine to what compensation the plaintiff should be entitled; and that the defendant promised the plaintiff, that if the tenancy should be determined, and the plaintiff should have made improvements, for which he should not have been

(k) 8 T. R. 139.

(l) *Agar v. Macklow*, 2 Sim. & Stu. 418; *Price v. Williams*, mentioned by Lord Eldon, C., 6 Ves. 818; and see *Cheslyn v. Dalby*, 2

Y. & C. 170, and *Bright v. Durnell*, 4 Dow. P. C. 756.

(m) See especially Form of Lease, No. 2.

(n) 1 Exch. 809.

compensated, the defendant would, at the plaintiff's request, appoint a person for such purposes.

The declaration then averred, that the tenancy was determined by the defendant; that the plaintiff had made improvements for which he had not been compensated; that the plaintiff, after the determination of the tenancy, appointed J. D. to determine the compensation; and J. D. was ready to act, of which the defendant had notice, and was then requested by the plaintiff to appoint some person on his behalf. It was held, on special demurrer, that the declaration was bad, as stating a promise which did not legally arise from an executed consideration, (for upon a by-gone consideration no promise can be stated except that which is implied by law to arise from it,) and also on the ground that there was no allegation that the plaintiff had requested the defendant to appoint a valuer before the commencement of the suit.

*Items of Allowance.*—In *Branscombe v. Rowcliffe* (o), it was part of a contract for the sale of a farm, that it should be referred to a valuer to ascertain and certify the amount of the following particulars. "First, the seed, wheat, and vetches sown on the several fields of A.'s late farm at Bampton, previous to December 25, 1847, (the day possession was given to the purchaser); secondly, the labour of ploughing and sowing the same; thirdly, the quantity and cost price at the kiln of the lime carried on the same farm since Michaelmas, 1847, but not the cost of carriage; fourthly, the value of the hay left on the farm at Christmas, 1847. All the above are to be paid for by Mr. B. We mutually agree to abide by your valuation."

The valuer having allowed a certain sum for three ploughings of a portion of the land, which had been sown with turnips that failed, a certain other sum for lime, and a certain other sum for "working out and burning stroyle," the Court declined to interfere after verdict. *Per Wilde, C. J.*, "I am unable to determine what are the incidents to ploughing and preparing land for tillage, and therefore I cannot say that this was an improper item in the allowance."

*Waiver of Valuation Agreement.*—Where the agreement in

writing expresses the manner in which the valuation shall take place, a waiver of such valuation by word of mouth will not be binding, although the subject-matter of this portion of the agreement does not require writing under the statute of frauds. In *Harvey v. Grabham* (p), Lord Denman, C. J., in delivering the judgment of the Court, said: "The original assent was in writing, and necessarily so, for it related to an interest in lands, and being an entire assent the whole was necessarily in writing; *Chater v. Beckett* (q). Now, assuming that it was competent to the parties to waive and abandon the whole of the first agreement by a subsequent agreement not in writing, (which is, however, doubted in *Goss v. Lord Nugent* (r),) yet here, as in that case, the parties have not waived and abandoned the whole; for it appears by the declaration that the lease is not yet granted; that the original agreement to grant it is still subsisting, and the plaintiff avers his readiness to grant it under that agreement. What has been done is a waiver and abandonment of part only; and if that part had of itself required writing within the statute of frauds, the case of *Goss v. Lord Nugent* (s), and *Earl of Falmouth v. Thomas* (t), are express authorities to show that the waiver would not be binding. Here that part might have been good of itself without writing, by reason of the acceptance which is averred in the first count, though it may be otherwise as to the second count, which is for goods bargained and sold, not sold and delivered; and it is contended that, as it was competent to the parties to have made two contracts, in the first instance—one in writing, as to the lease, the other not in writing, as to the straw, manure, &c., so it was competent to them afterwards, by agreement not in writing, to separate into two parts the subject-matters of the original agreement, and to substitute a new agreement, not in writing, as to the straw and manure, &c. We think that it is not so: but that the agreement, being entire in the first instance, must so continue, and that it cannot be separated or altered, otherwise than by writing."

(p) 5 Ad. &amp; E. 74.

(q) 7 T. R. 201.

(r) 5 B. &amp; Ad. 58.

(s) 5 B. &amp; Ad. 58.

(t) 1 Cr. & M. 89; S. C.,  
Tyrw. 26.

*Appointment of Referee.*—In *Tew v. Harris* (u), the agreement stipulated that the outgoer should sell, and the landlord should purchase crops at a valuation to be made by two persons, one named by each party; and if such persons disagreed, by a third person to be named by them before entering on the valuation: that each party should appoint a referee by the 31st of May, and if either party should neglect to appoint such referee, the referee of the other alone might make a final decision; and in case either party or his referee should neglect to attend any reference after notice, the party or the referee attending should enter upon the reference *ex parte*, and make a final decision: the valuation to be made by the 3rd of June. Under this agreement the outgoer appointed a referee on the 31st of May, and sent notice thereof to the landlord by that night's post, who received it on the 1st of June. The Court held, that the appointment was not made within the time limited by the agreement, for that it was not complete until it had been notified to the landlord.

#### SECT. 9.—Of the Provisoes and Conditions.

*Against the Operation of the Custom of the Country.*—We have already seen that the custom of the country will operate upon a tenancy whether it be by parol, by writing, or by deed, unless expressly excluded by the terms of the contract, or indirectly excluded by stipulations inconsistent with the custom; and that in the latter case the custom will only be inoperative so far as it is controlled by the express terms of the contract (x). All agreements and leases, therefore, which are intended to comprehend all the rights and obligations of the parties should have a clause expressly declaring that the parties intend to be bound by no local custom, but that the whole terms of the contract are to be read in the words of the instrument and in the obligations of the general law (y).

*In Agreements only.*—In agreements it will be necessary, for reasons before given, to declare by way of proviso that the

(u) 11 Q. B. 7.

(x) *Ante*, p. 132; *Duke of Roxburgh v. Robertson*, 2 Bli. P. C.

156.

(y) *Ante*, p. 125.

instrument is not intended by the parties to operate as a present demise, and further that if the tenant be let into possession before the intended lease has been executed the tenancy shall be from year to year upon the terms specified in the agreement (z). This latter provision is necessary both for the landlord and the tenant; to the landlord because it at once renders his rent certain, and enables him to distrain, to the tenant because it prevents his immediate eviction without notice.

*For Resumption of Land.*—We have already seen that a provision of this kind should be specific in its terms (a).

In *Doe d. Gardner v. Kennard* (b), there was a proviso that “in case the lessor shall at any time, or from time to time during the continuance of the lease, be desirous of having any part of the said piece or parcel of land and premises hereby demised delivered up to him, and sign three months’ notice in writing, the lessee covenants to give up; and that the lessor shall and may take peaceable and quiet possession, paying a reasonable and fair compensation in respect of the moneys which may have been laid out by the lessee in improving the condition of the land given up.” The lessor gave a notice under this proviso containing an offer to pay compensation to the lessee “in respect of any of the repairs which may have been done by you.” The Court held that the lessor was entitled under this proviso to require the possession of *the whole* of the premises after three months’ notice, and that the notice ought not to be construed strictly, and was sufficient, and sufficiently contained an offer to pay, compensation within the meaning of the lease.

*For Re-entry.*—It remains only to speak of the proviso for re-entry in case of non-payment of rent, or breach of covenants, which is a proviso common to leases and agreements; or at least it is a proviso for which the agreement should never omit to stipulate.

The only real remedy against a fraudulent tenant is this power of eviction. Penalty rents are valuable and effective to restrain or punish occasional irregularities in a solvent tenant, but they are merely the seed for a crop of lawsuits when

(z) *Ante*, p. 144.

(a) See *ante*, pp. 159, and 163.

(b) 12 Jur. 821, Q. B.

brought to bear upon a bad and failing tenant. The only safe thing for a landlord to do with such a man is to evict him before he has time to ruin the farm and become bankrupt. This power, therefore, the landlord should always retain. On the other hand an unqualified right to evict the tenant for any single breach of any one of the numerous covenants or stipulations of a lease or agreement is liable to great abuse, and (although in leases or agreements from year to year where a tenant right is given, notwithstanding forfeiture, it would appear to be less open to objection) would destroy the security of a lease for a term of years. Such a power would enable a landlord to take advantage of some no very important breach to get back his farm with all the improvements which the lessee had made with a prospect of twenty years' enjoyment. Upon this very important point therefore the draughtsman should seek that proper means which may give the landlord such a measure of power as may suffice to protect himself, yet will be incapable of being made an engine of oppression.

*Forfeiture for Non-payment of Rent.*—It is usually recommended that the right of re-entry shall expressly attach in the case of non-payment of rent, although no legal or formal demand of the rent shall have been made. This recommendation is occasioned by the ceremonies required by the common law to render a demand of rent valid, and by the construction put by the Courts upon the statute 4 Geo. IV. c. 28, which enacted that when no sufficient distress was found upon the premises, and half a year's rent was due, the landlord might serve a declaration in ejectment, and proceed to judgment and execution without any formal demand or re-entry.

In the absence of any mention in the lease or agreement of some particular place of payment, the demand at common law must be made at the front door of the house, and a demand at the back door is not sufficient (c). If lands and woods be demised together the demand must be made upon the land as the most worthy; if the wood only be demised then at the gate of the wood, or in the way through it, or in other notorious place. If one place be as notorious as the other the lessor



may make the demand at either, and although the lessee be in some other part ready to pay his rent this will not save his forfeiture (*d*).

The demand need not be made on the day the rent becomes due. He may demand it on the day the forfeiture accrues (*e*), and he must demand the precise sum due; a demand of too much or too little is informal (*f*).

The forfeiture may be saved by a tender before sunset of the day, and the tender will not be vitiated although the sum tendered be more than is due (*g*).

The statute which was passed to render these formalities unnecessary is confined to cases where half a year's rent is due and no sufficient distress can be found upon the premises (*h*); it is practically sufficient for all ordinary cases of farm tenancies, except that it imposes upon the plaintiff in the ejectment the inconvenient proof of there being no sufficient distress on the premises; for if it can be shown that the landlord omitted to search any part of the premises for a sufficient distress he will be defeated (*i*).

Moreover in acting under this statute the landlord must take care that not only has the half-year's rent accrued due, but also that the right of entry has occurred. According to the usual form of proviso the right of entry does not take place until twenty-one days after the rent has been in arrear, and an affidavit which stated "that the premises were deserted, that there was due in respect of half a year's rent at Christmas last the sum of 100*l*.; that there was no sufficient distress upon the premises; that the landlord had a right of re-entry under the lease, and that the declaration and notice had been served on the 10th instant in the manner prescribed by the statute," was held insufficient inasmuch as it did not appear from the affidavit that the landlord had a right of re-entry in respect of the non-payment of half a year's rent at the time of affixing the declaration and notice upon the premises (*h*).

(*d*) Co. Lit. 202 *a*; *Dean and Chapter of Gloucester's case*, 3 Dy. 329 *a*.

(*e*) *Allen v. Harrison*, 1 And. 9.

(*f*) *Smith v. Doe*, 7 Pri. 500; *Scot v. Scot*, Cro. Eliz. 73.

(*g*) *Wade's case*, 5 Co. 114 *a*.

(*h*) *Goodright v. Cator*, Doug. 486.

(*i*) *Rees v. King*, Fort. 19.

(*k*) See *Doe d. Powell v. Roe*, 9 D. P. C. 549; *Doe d. Gretton v. Roe*, 4 C. B. 576; *Doe d. Dixon v. Roe*, 7 C. B. 134.

Modern forms of proviso therefore usually contain words to obviate the necessity of any formal or legal demand, and thus avoid the difficulties both of the common-law doctrine and of the statute. But on the other hand it appears very unreasonable that the tenant should be liable to summary eviction on account of perhaps an accidental omission to pay the rent within the period named; and scarcely requisite that the landlord, who has such ample remedy for recovery by distress, should have the additional power of eviction while sufficient distress is upon the premises. Some words to the following effect might be introduced into the common form of this proviso, and perhaps meet the equity of the case: "After notice in writing, signed by the [landlord] or his agent, and left at the farm house directed to [the lessee or tenant in possession] (which notice shall inform [the lessee or tenant in possession] that an arrear of rent is due and unpaid, and is required to be paid to save the forfeiture of his tenancy, and shall appoint some convenient time and place at which the payment may be made), then in case the said rent shall not be paid at the time and place so appointed, but shall remain due and unpaid for the space of fourteen days after the delivery of such notice, it shall be lawful," &c. It may be well perhaps to provide that "in case there be no tenant in actual possession of the premises, no legal or formal demand, or rent, nor any notice as aforesaid shall be necessary, but this proviso and condition shall be absolute and take effect upon the non-payment of all or any of the rents hereby reserved for three weeks after the same shall have accrued due."

The operation of this proviso for a forfeiture in case of non-payment of rent was, however, much circumscribed by the practice of the courts of equity, when relief was usually given on payment of the rent, interest, and costs, whatever interval might have elapsed between the accrual of the debt and the day of payment (*l*). This practice, however, was found so inconvenient that the statute 4 Geo. II. c. 28, was passed, to confine the courts of equity within narrower limits. This statute provides, that if the lessee suffer judgment to be recovered on ejectment, and execution to be executed without

(*l*) *Doe v. Lewis*, 1 Burr. 619; *Bowser v. Colby*, 1 Hare, 109, 125.

paying the rent and costs, and without filing any other bill for relief within six months after execution executed, he shall be barred from all relief, and the lessor shall thenceforth hold the premises discharged from the lease. The statute also provides, that if a bill be filed for relief, the lessee shall bring the rent and taxed costs into Court, within forty days after answer filed.

The same statute (sect. 4) provides, that at any time previous to the trial the proceedings shall be stayed upon payment of the rent and costs (*m*).

*Re-entry for Breach of other Covenants.*—The proviso, however, applies not only to the non-payment of rent, but also to the breach of all other covenants. In the majority of cases, the breach of a covenant will, under the usual form of proviso, subject the lessee to eviction, without remedy or relief. The general rule is, that if, by unavoidable accident fraud, surprise, or ignorance, not wilful, a party has been prevented from executing his covenant literally, a court of equity upon compensation, estimated upon some certain standard of computation, will give relief (*n*). But this rule implies two conditions; first, that the breach be not gross, ruinous, or wilful (*o*); and secondly, that the damage suffered by the lessor is capable of some certain standard of computation. Thus it has been held that equity will not relieve against a forfeiture by neglect to insure, assigning or underletting, or suffering a footway to be made over the premises, contrary to covenant (*p*). It appears, however, that equity will relieve against a forfeiture for a breach of covenant to cultivate a farm in a particular way, if the injury arising from it be very inconsiderable.

In *Lonat v. Lord Ranelagh* (*q*), the only breach proved was a breach of covenant in the cropping a piece of ground called the Bullock Hill piece, or four acres part thereof, during three years. It was shown that circumstances rendered the

(*m*) As to stay of proceedings under this statute, see *Doe v. Gustard*, 2 Dowl. N. S. 615; *S. C.*, 5 Sco. N. R. 518; *Doe v. Masters*, 2 B. & C. 493.

(*n*) *Eaton v. Lyon*, 3 Ves. 692.

(*o*) *Hill v. Barclay*, 16 Ves. 404;

18 Ves. 63.

(*p*) *Descarlett v. Dennett*, 9 Mod. 22; *Sanders v. Pope*, 12 Ves. 291; *Bracebridge v. Buckley*, 2 Pri. 221.

(*q*) 3 Ves. & Bea. 30.

general course of the cropping of the farm inapplicable to these four acres, and although the injunction was refused upon other grounds, yet Lord Chancellor Eldon intimated, that against the breach of this one covenant, the Court would have relieved, so little damage arising from it. In the previous case also of *Gourlay v. The Duke of Somerset* (r), Lord Eldon appeared to recognise a distinction between great and trivial breaches of culture covenants, saying that the Court would not interfere on behalf of a tenant who had treated his farm in a *grossly* unhusbandlike manner.

As to omissions to repair, or to spend money in improvements, the cases are not quite free from doubt; but the result appears to be that equity will not relieve unless the omission has been caused by unavoidable accident, fraud, surprise, or ignorance, not wilful (t).

The very stringent operation of this proviso upon breaches of covenant, therefore, renders it very necessary to the security of the tenant, that he should be guarded against its oppressive use in cases of small breaches. This is sometimes effected by a provision, that no forfeiture shall accrue from any breach of covenant (except payment of rent and insurance), until notice shall have been given of the breaches complained of, and three months shall have elapsed without such breaches being remedied. This relaxation, however, on the other hand, requires great care, or the landlord's remedy to recover his farm before it is entirely ruined will be frittered away. It seems to be quite necessary that breaking up old turf and over-cropping should be retained as absolute causes of forfeiture, trusting to the interference of the courts of equity in cases of forfeiture for insignificant breaches.

*Bankruptcy, &c.*—Bankruptcy, insolvency, executions upon the premises, and compounding with creditors, or transfer for payment of debts, are also ordinarily made to give the landlord a power of re-entry under this proviso, and the validity of such a provision has been long established (t).

By the operation of the statutes relating to bankruptcy and insolvency, (which it is beyond our province here to discuss at

(r) 1 Ves. & B. 72.

(s) See *Bracebridge v. Buckley*, 2 Pri. 200, where all the authorities

are discussed.

(t) See *Roe d. Hunter v. Galliers*, 2 T. R. 133.

any length,) the interest in any lease or agreement for a lease, or indeed in any tenancy (*u*), parol or otherwise, vests in the assignee. If, however, the assignee elect not to accept, the stat. 6 Geo. IV. c. 16 relieves a bankrupt from the rents and covenants on his delivering up the lease, or farm, to his lessor, within fourteen days after the refusal of the assignee to accept it. The law is otherwise as respects an insolvent, the statutes 7 Geo. IV. c. 57, s. 23; and 1 & 2 Vict. c. 110, s. 50, do not enable an insolvent to absolve himself by surrender of his lease, and he remains liable under his covenants.

We have already seen (*x*) that a covenant against assignment is no protection against the premises being taken by the assignees of a bankrupt, and by them passed to an assignee who will be bound only by the covenants which run with the land. It is to avoid this very serious danger that the proviso for re-entry raises a right of re-entry immediately upon the fact of bankruptcy (*y*), or insolvency, transfer to creditors, or execution levied at the time of such recognition.

*Generally.*—The proviso for re-entry may be introduced in a demise by an instrument not under seal where a lease of that kind is good as well as in a lease under seal, and may also be a condition of an agreement (*z*). It is construed strictly by the Courts, but it may be convenient here to epitomize a few of the more important cases that have been decided upon the construction of this provision.

*Outgoing Allowances.*—Where a tenant right is reserved it appears to be only equitable that the forfeiture and re-entry should not affect the tenant's right to those outgoing allowances to which he is entitled by the terms of his tenancy. The rule of law is that on re-entry the lessor is entitled to the emblements (*a*), but this appears a hardship; the valuer should in such case have power to estimate all damage that may have accrued from dilapidations or breach of covenant, and to deduct them from the sum to be paid for outgoing allowances or unexhausted improvements.

(*u*) *Slack v. Sharpe*, 8 Ad. & E. 384; *Doe v. Pritchard*, 5 B. & Ad. 366; but see *Briggs v. Sowry*, 8 765; *Doe v. Evans*, 5 B. & C. 584.  
M. & W. 729. (*z*) *Doe v. Watt*, 8 B. & C. 315.

(*x*) *Ante*, p. 205.

(*a*) *Davis v. Eyton*, 7 Bing. 154;

(*y*) See *Doe v. Rees*, 4 Bing. N. C. S. C., 4 Moo. & P. 820.

In *Doe d. Bamford v. Hayley* (b), a lease for twenty-one years was made by a party seised in fee, with a proviso that if either of the said parties should be desirous of determining it at the end of the first seven or fourteen years of the term, it should be lawful for either of them, his executors or administrators, so to do, upon giving to the other of them, his heirs, executors, or administrators, twelve months' notice in writing. Here the Court held, according to the spirit of the provision, that the devisee of the lessor might determine the lease by notice, the intention of the parties having clearly been not to give a collateral power to be exercised by a stranger, but to annex certain privileges to the term and to the reversion, to pass with such term and reversion respectively, and to be exercised by the persons, whosoever they might be, to whom such terms or reversion might come.

In *Doe v. White* (c) an under lease provided that in case of non-payment of rent, &c., it should be lawful for the said T. B. and I. W., (the original lessees,) their executors, administrators, or assigns, and for the said J. S. H., (the ground landlord,) his heirs and assigns, to re-enter. The Court held that a separate right of re-entry was conferred on the lessees, without the necessity of joining the ground landlord, and that must be read or otherwise by refusing to enter, J. S. H. might render irreparable any loss occasioned to his own lessees.

In *Doe d. Jepson* (d) a lessee, amongst other covenants covenanted to use, consume, and spend on the premises all the hay, dung, &c., under a penalty of 5*l.* for every ton carried off; and the lease contained a clause which, after enumerating every covenant in the lease except the one to consume the hay, &c., on the premises, provided, that for the breach of any of the covenants in the lease the lessor might re-enter; it was held that the clauses of re-entry extended to all breaches of covenant including the one not to remove the hay, notwithstanding the lessor's liability to the penalty on a breach.

But where the covenants by the lessee to pay rent, and not to assign without licence, were followed by a proviso for re-entry, in case the rent should be in arrear, or all or any of the covenants hereinafter contained, on the lessee's part should be

(b) 12 East, 464.

(c) 4 Bing. 276.

(d) 3 B. &amp; Ad. 402.

broken, and there were not any covenants by the lessee after the proviso, but only a covenant by the lessor, that the lessee paying the rent, and performing all and every the covenants hereinbefore contained on his part to be performed should quietly enjoy, and the lessee assigned without license, the Court refused to apply the word hereinafter to the lessee's covenants that preceded it, or to reject the word altogether.

In *Doe v. Carew (d)* the lease contained a proviso in the following terms:—"That if the said (lessee), his executors, administrators, or assigns, shall, either by their or his own act or acts, or by bankruptcy, insolvency, writ of extent or of execution, by *feri facias*, or other act of law, or any other means, whereby, either voluntarily, or without, or against his or their consent, whereunder the said premises demised, or any part thereof, would in case this proviso did not exist be liable to be seized by the sheriff, or any other person, or in case the said (lessee), his executors, administrators, or assigns, shall at any time or times hereafter make breach or default, in the performance of the covenants or any of them hereinbefore on his or their parts contained, then, and in any of the cases, this present indenture, and the term hereby created, shall thenceforth cease and determine; and it shall and may be lawful to and for the said (lessor), his heirs and assigns, into the said hereby leased premises, or into any part thereof, in the name of the whole to re-enter, and the same from thenceforth to have again, repossess, enjoy, and keep, as in his and their first and former estate, and the said (lessee), his executors, administrators, and assigns, thereout utterly to expel, put out, and remove." The Court held that this clause was too unintelligible to support an action of ejectment for a forfeiture, the lessee's effects having been seized under a *feri facias*.

In *Doe v. Stevens (e)* there was a proviso for re-entry if the lessee shall do or cause to be done any act, matter, or thing whatsoever contrary to or in breach of any one or more of the covenants contained in the lease. This was held not to give a right of re-entry on a breach of covenant by the lessee to repair, the words importing an act, and nothing appearing in

(d) 2 Q. B. 317.

(e) 3 B. & Ad. 299.

the other parts of the instrument from which an intention could be gleaned, that the clause should apply to an omission to do an act. The proviso should extend to cases of omission as well as of commission, on the part of the lessee.

So, where a proviso conferred a power of re-entry in case the lessee by the space of thirty days after the notice of breach of the covenants contained in the lease, should not perform the said covenants; and the lessee covenanted not to suffer any building to be erected in the garden without the lessor's consent, and afterwards built a portico without consent; it was held, that the lessor could not recover possession, though he had given to the lessee more than thirty days' notice before the commencement of the action, that unless he removed the projection, proceedings would be instituted for that purpose; for it could not be expected that thirty days' notice should be given not to do such an act.

Where a lease contained a proviso for re-entry, in case the lessee should commit waste to the value of 10s., and the lessor brought ejectment in consequence of the tenant's having pulled down some old buildings of more than 10s. value, and substituted others of a different description; it was held that the waste contemplated by the proviso was waste producing some injury to the reversion; and, as the value of the reversion might probably have been increased by the alteration, it was a question for the jury, whether such waste to the value of 10s. had been committed; and as that question had not been submitted to their consideration, a rule for a new trial was made absolute.

And where a lease contained two provisos for re-entry, the one if the yearly rent of 300*l.* should be in arrear and unpaid for thirty days after it should become payable; the other, in case the yearly rent, which was stated to be payable half-yearly at Lady-day and Michaelmas, should be in arrear, the lessor was held to have a right to re-enter on non-payment of each half-year's rent, as the former clause contained the description of the amount of rent to be annually paid, and the latter the times of payment.

The case of *Muskett v. Hill* (*f*) is important to show that if the right of re-entry be dependent on a previous notice being



given, the notice to determine the lease must be clear and unconditional. The deed in that case contained a proviso, that if there should be any failure or breach by the grantees in the performance of any of the covenants, (and as respected covenant No. 1, a failure after notice so to work, to keep six able miners constantly employed in driving the adits, or sinking the deepest level, should be considered one of the breaches thereof,) and notice in writing should be affixed within certain limits that the lessors intended to avoid the license thereby granted, because of such failure or breach, then after the expiration of one month from the affixing of such notice, it should be lawful for the grantors to re-enter. The grantees having failed to mine according to the covenant, the grantors gave them notice, that unless they thenceforth kept six able miners constantly employed in driving the adits or sinking the deepest level, they, the grantors, would, in pursuance of the proviso, after the expiration of one month from the affixing of such notice, re-enter the premises, which they accordingly did, six men not having been kept at work within a month after the notice: and it was held, that this notice was insufficient, as it contained no intimation of an election to determine the grant on account of the forfeiture which had been incurred; but only on the happening of a certain contingency, which might or might not take place, that is, if a further breach of covenant should be committed.

Lastly, it is very important to observe that a proviso for re-entry may be so worded as to supersede the necessity for an action of ejectment to expel a tenant on breach of covenants, and to justify the landlord in resorting to a forcible expulsion. This has lately been decided in the case of *Kavanagh v. Gudge* (g). In that case (which was an action of trespass for breaking and entering a dwelling-house and expelling the plaintiff) the plaintiff was tenant from year to year, under an agreement by which, among other things, the plaintiff agreed, "that if the rent or any part thereof should be unpaid on any day on which the same should become due, and for ten days after-

(g) 1 D. & L. 928; S. C., J., N. S., Q. B. 157; *Harvey v. 6 Sco. N. R. 508*; 7 Sco. N. R. *Brydges, or Bridges*, 14 M. & W. 1025; 13 Law J., N. S., C. P. 99; 437; S. C., 3 D. & L. 55. and see *Milner v. Myers*, 15 Law

wards; or if the plaintiff should not at all times observe and keep the several conditions and agreements thereinbefore mentioned, or quit and deliver up possession of the house according to notice, then in either of such cases, and without any demand whatever, it should be lawful for the landlord and his agents immediately to enter upon and take possession of the house and premises, and (the tenant) and all persons claiming under him, for ever to remove and expel therefrom, without any legal process whatsoever, and as effectually as any sheriff might do, in case the said (landlord) had obtained judgment in ejectment for the recovery of possession thereof, and a writ of *habere facias possessionem*, or other process, had issued on such judgment directed to such sheriff in due form of law; and that in case of such entry, and of any action being brought, or other proceedings taken for the same by any person whomsoever, the defendants might plead leave and license in bar thereof, and the agreement might be used as conclusive evidence of the leave and license of (the tenant) to the said (landlord), and all persons acting therein by his order, for the entry or trespasses or other matters to be complained of in such action or other proceeding." The rent being in arrear, the defendants, under a written authority from (the lessor), entered and distrained, and forcibly turned the plaintiff and his lodgers, and their goods, out of the house, and kept possession of the premises.

To the declaration in trespass, the defendants pleaded that they committed the trespasses by the leave and license of the plaintiff; and it was held, that the entry of the defendants and expulsion of the plaintiff were justified under this form of plea.

The agreement contained no provision that upon non-payment of rent the lease should be void, so as to strip the tenant of his right to possession before the entry of the lessor. Therefore the landlord had no right to the possession except under the license thus expressly given: and it would only be upon his entry that any such right would revert in him. Tindal, C. J., in delivering the judgment of the Court, after discussing the authorities, said, "We therefore think that, under the peculiar wording of this agreement, the entry of the defendant and the expulsion of the plaintiff may be well justified

under this form of plea. It was urged for the plaintiff, that if the entry and removal of the goods might be justified under the plea of license, yet that the assault and battery and expulsion of the plaintiff could not be so defended. But we think that as the entry and expulsion were justified by the license, the assault and battery, which are laid merely as aggravations of the principal trespasses complained of, are also covered by it; and that if the plaintiff meant to avail himself of any excess of force employed in the expulsion, he ought to have new assigned it."

*Waiver.*—The re-entry is at the option of the lessor, and he may enforce or waive it at his pleasure. Forfeitures are odious in law, and slight acts are deemed sufficient to amount to a waiver (*h*). The rule, as usually stated, is, that any recognition of the tenancy after the forfeiture has accrued, and the landlord has had notice of such accrual, will waive the right (*i*).

Receipt of rent from an assignee is *prima facie* a waiver of the forfeiture occasioned by assignment. So, acceptance of rent after insolvency. And if, after the accrual of a forfeiture, the lessor sanction an outlay of money on the premises by passively looking on, a consent to the alteration and a waiver of the forfeiture will be implied (*k*).

But there is a distinction between breaches which are complete and ended by one act (*l*), as an assignment, and breaches which continue, such as non-insurance, over-cropping, or improper cultivation. In the latter class of cases, every day's continuance of the wrongful practice, or omission, is a new breach, and creates a new forfeiture (*m*).

In no case, however, can a waiver take place unless the lessor be cognizant at the time of the fact of the forfeiture (*n*).

These rules of law respecting waivers have sometimes been

(*h*) *Doe v. Gladwin*, 6 Q. B. 953.

(*i*) *Doe v. Woodbridge*, 9 B. & C. 376.

(*k*) *Doe v. Allen*, 3 Taunt. 78; *Witchcot v. Fox*, 3 Salk. 3; *Doe v. Rees*, 4 Bing. N. C. 384.

(*l*) *Dowell v. Dew*, 1 Yo. & C.,

V. C. 345.

(*m*) *Doe v. Woodbridge*, 9 B. & C. 376; *Doe v. Pritchard*, 5 B. & Ad. 771.

(*n*) *Marsh v. Curteis*, 2 Mo. 425; *Hume v. Kent*, 1 B. & B. 561.

avoided by the insertion of words in the proviso, to the effect that no recognition of the tenancy or receipt of rent shall act as a waiver of any forfeiture, although the lessee may have had notice of the forfeiture at the time of such recognition.

*Signature.*—If the instrument be in the form of a proposal to take, it should be signed by the tenant but not by the landlord. There should be a parol acceptance by the landlord, and evidence should be preserved of the fact (o).

If the instrument be in the form of an agreement for a lease, it should be signed by the parties to it, but need not, and indeed, had better not, be sealed (p). There are many cases (q) in the books, as to what is a sufficient signature. For instance, it has been held that the mere insertion by the party of his name in his own handwriting, in the body of the agreement, as, “Mrs. Stokes to pay Moore 24*l.* half-yearly,” is not a signature (r); and, on the other hand, the signing an agreement as a witness, after having heard it read over, was considered a sufficient signature (s)—it appearing from the instrument that the person signing as a witness was, in fact, one of the parties. The signature, which is rendered necessary by the Statute of Frauds (t), must be such as will amount to an acknowledgment that the agreement is his, and that he considers the instrument complete (u). An agreement may be enforced against a party who has signed it, even though it does not bear the signature of the party enforcing it (x). But the safe course is for both landlord and tenant to sign two copies of the draft agreement, and each retain one. If the instrument of letting be a lease, it had better be signed

(o) *Drant v. Brown*, 3 B. & C. 665.

(p) *Wheeler v. Newton*, Prec. Ch. 16; S. C., 2 Eq. Ca. Abr., 44, pl. 5.

(q) *Hawkins v. Holmes*, 1 P. Wms. 770; *Lowther v. Carill*, 1 Vern. 221; *Charlwood v. Duke of Bedford*, 1 Atk. 497; *Shippey v. Derison*, 5 Esp. 190; *Powell v. Dillon*, 2 B. & B. 416; *Verlander v. Codd*, 1 Turn. & Russ. 352.

(r) *Stokes v. Moore*, 1 Cox, 219.

(s) *Walford v. Beazeley*, 3 Atk. 503; S. C., 1 Ves. 6.

(t) 29 Car. II. c. 3, s. 4. The words of the stat. are “signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized.”

(u) *Bawdes v. Amhurst*, Prec. Ch. 402.

(x) *Dowell v. Dew*, 1 Yo. & C., V. C. 345, 356; but see *Doe d. Marlow v. Wiggins*, 4 Q. B. 367; S. C., 3 Gal. & Dav. 504; *Sutherland v. Briggs*, 1 Hare 2634; *Wright v. Dannali*, 2 Camp. 203; *Pitman v. Woodbury*, 3 Exch. 4.

and sealed; for although a lease for not more than three years need not be sealed, and although a lease for more than three years must be sealed but need not be signed (y), yet it is better in both cases to execute the document by signing and sealing.

(y) See *Cooch v. Goodman*, 2 Q. B. 580; *Aveline v. Whisson*, 4 Man. & G. 801.

## CHAPTER VII.

FORMS OF INSTRUMENTS OF LETTING FROM YEAR  
TO YEAR.§ 1. *Common Practical Forms.*§ 2. *Miscellaneous Stipulations.*§ 3. *Special Precedents.*SECT. 1.—*Common Practical Forms.*No. 1.—*Form of Agreement for a Lease from  
Year to Year.*

\*.\* This precedent may be readily adapted to the form of a lease from year to year.

AGREEMENT FOR A LEASE made this                      day of  
185 , between John Styles of ———, esquire, of the one  
part, and Richard Nokes of ———, farmer, of the other  
part.

John Styles, the landlord, agrees to grant, and Richard Nokes, the tenant, agrees to accept a lease, whereby the said John Styles shall covenant for himself, his heirs and assigns, with the said Richard Nokes, his executors, administrators, and assigns; and the said Richard Nokes shall covenant for himself, his executors, administrators, and assigns, with the said John Styles, his heirs and assigns, to the intent following, that is to say: (a) the term shall commence from the 25th of March next after the date of this agreement, and shall continue for one year, and thence from year to year, determinable at the end of the first or any other year, by six months' notice to quit (b). The premises (c) to be demised are the Grange Farm in the parish of ———, which contains by estimation 300 acres, and consists of the fields numbered from number

(a) As to habendum, see *ante*, p. 165.

(b) See *ante*, p. 165.

(c) As to description of premises, see *ante*, p. 155.

one to number thirty, both inclusive, upon the tithe-apportionment map, with all the appurtenances to the said farm, as now enjoyed by the present tenant (*d*). All trees, coppices, plantations, minerals, quarries, lime, fuller's earth, clay for bricks, tiles and earthenware, slate, stone, and royalties, shall be excepted from the lease, and powers reserved to the landlord for the full enjoyment and exercise thereof. Also a right shall be reserved to the landlord to take in hand any portion of the farm not exceeding fifty acres, making a proportionate reduction in the rent, and fencing and keeping in repair the fences of the land so taken into hand (*e*). The game, water-fowl, and fish shall be reserved to the landlord, with power to preserve the same (*f*). The rent to be 300*l.* a year (*g*), together with 5*l.* a year additional rent for every acre of land used or cultivated at any time during the tenancy contrary to the provisions of the lease, without a written consent, signed by the landlord or his agent (*h*). The whole of the rents to be due quarterly, on the usual quarter days, and always to be payable one quarter in advance, if demanded (*i*). The tenant shall covenant to pay the rents when they become due, at the landlord's audit; to pay all taxes and rates of every description, except income-tax and land-tax (*k*); to do all necessary repairs, the landlord finding rough wood and bricks within three miles of the farm; to pay to the present tenant such sum as shall be awarded to him by the valuers or umpire, and to expend upon the farm such sums as shall have been deducted by the valuers or umpire from the allowance to the outgoer by reason of dilapidations—such expenditure to be under the control of the landlord (*l*); to preserve the game,

(*d*) Exceptions and reservations, see *ante*, p. 156.

(*e*) See *ante*, pp. 159 and 163.

(*f*) See *ante*, p. 160, and miscellaneous stipulations, Nos. 51 to 56, *post*; and for stipulation for recompense to tenant for injury done to game, see Miscellaneous Stipulations, No. 129.

(*g*) If a corn rent, see p. 171, *ante*, and forms Nos. 20, 21, and 22, Miscellaneous Stipulations, chap. vii. sect. 2, *post*.

(*h*) As to the expediency of re-

serving this penalty rent, see *ante*, p. 180. If omitted, use the word "rent" for "rents" throughout the agreement.

(*i*) If it is objected to make the rent payable in advance generally, the words [after notice to quit given by either party] may be added.

(*k*) See *ante*, p. 170.

(*l*) It is always very much safer not to let a tenant into possession until this valuation has been made, and the sum paid or secured.

foxes, water-fowl, and fish for the landlord ; to allow the landlord and those authorized by him, to come upon the premises, to hunt, hawk, shoot, course, or fish, or in any other way to destroy the game, foxes, water-fowl, and fish ; to permit the landlord to bring actions or to take any lawful proceedings against trespassers in the name of the tenant, the tenant being indemnified ; to permit the landlord, or those authorized by him, to enter the farm and buildings, to view the state of repair and cultivation, at all convenient times ; to reside at the farm-house and cultivate the farm himself (m). Not to underlet the premises, or any part thereof, or to assign the lease ; and not to allow any rights of way, or any other right of any kind or description whatever, to be exercised upon the said premises to the injury of the landlord, except such as are legally and of right now exercised by parties entitled thereto (n) ; to keep all the farm-house and buildings insured, produce the receipts when required, and spend all moneys received in respect of such insurance in rebuilding or repairing any damage done by fire or tempest ; to occupy the premises in a proper and tenantlike manner ; to cultivate the farm, having regard to the soil and capabilities thereof, according to the best and most approved system of husbandry pursued in any part of England, without reference to the customs of the neighbourhood ; to keep the land in good heart and condition ; to perform all farming operations, whether of culture, sustenance, or otherwise, in the best and most efficient manner, and with the best and most approved materials. That these two general rules shall be subject to and explained by, but not in any way superseded by, the following particular covenants, namely : Not to take two successive crops of the same kind of grain (o) ; to have in each year one-half part of the arable land in summer fallow, or clover, or artificial grasses, not seeded or mown twice, or in turnips or other green crops, for fodder ; to consume

(m) This stipulation will be binding upon an assignee, although he be not named, *Doe v. Smith*, 5 Taunt. 795.

(n) The allowing a footpath to be made across a part of the farm is no breach of a covenant to occupy the premises in a proper manner ; *Doe*

*v. Rowlands*, 9 Car. & P. 734 ; and see *Hodson v. Middleton*, 6 B. & C. 295.

(o) For the culture stipulations, see *ante*, p. 190, and the various forms *post*, and Miscellaneous Stipulations, Nos. 71 to 89.



all hay, straw, and fodder with cattle (*o*), on the premises, and expend all the manure upon the farm (*p*). Not to break up any of the permanent turf lands, whereof the meadow lands consist of the closes marked ten, eleven, fifteen, eighteen and twenty, on the tithe-apportionment map, and the pastures thirteen, seventeen, nineteen and twenty-two, on the same map; nor the furze or gorse covers marked fourteen in the said map (*q*); nor to mow more than one-third of the pastures in any one year. Not to grow any unusual or exhausting produce on the farm, without the consent in writing of the landlord; and if flax should be grown, to consume all the seed in the fattening of cattle on the farm, and the flax in all rotations to be counted as a corn crop. And further, to covenant that after notice to quit, the tenant shall permit the landlord or succeeding tenant to enter upon all the land sown with corn, as soon as the crop is reaped and carried from the fields [or, after notice to quit, the tenant shall continue all the operations of the farm according to their proper succession and rotation, up to the termination of the tenancy]; and that at the determination of the lease the tenant shall quit and leave the farm and all its appurtenances in good heart and culture, and in sound repair.

The landlord shall covenant for quiet enjoyment (*r*) against the lawful acts of all persons whomsoever; to pay the tithe-rent charge (*s*); to allow the tenant to enter upon all the corn stubbles previous to the commencement of the term, so soon as the crops are reaped and carried from the field (*t*), [or, "to pay the tenant by valuation by two valuers, and if they should disagree, by an umpire (*v*)], for all farming operations properly and rightly performed upon the corn stubbles of the

(*o*) For other manure stipulations see Miscellaneous Stipulations, Nos. 90 to 96.

(*p*) If it be intended that the tenant may sell hay and straw upon bringing back equivalent quantities of manure, one of the stipulations for this purpose, which will be found in subsequent forms, may be substituted.

(*q*) If a lease describe the demised land as meadow land, no other evidence is necessary to prove that it

was meadow land at the commencement of the term; *Birch v. Stevenson*, 3 Taunt. 469.

(*r*) See *ante*, p. 214.

(*s*) See *ante*, p. 15.

(*t*) See *ante*, p. 216.

(*v*) For more ample stipulations in this respect, see Miscellaneous Stipulations, sect. 2, *post*, Nos. 118 to 127; and Form of Lease, No. 2. and for an account of outgoing allowances generally, see *ante*, p. 218.

last year of his tenancy, and whereof the landlord or succeeding tenant has the sole benefit.”] To pay the tenant by valuation as aforesaid, at a consuming price, for all hay, straw, and fodder remaining of the last year’s growth, and for all manure of the last year’s production, in the yards or upon the fallows, and one — part the value of the seed and labour upon the last year’s turnip lands. To pay the tenant such allowance for lime, marl, or unexhausted artificial manures as the valuers or umpire may deem reasonable, having regard entirely to the benefit, if any, which the landlord or succeeding tenant will derive from the application of such lime, marl, or artificial manures, and making deduction for the benefit which the outgoing tenant has derived therefrom. To pay the tenant also for all substantial and beneficial draining, of which he shall not have had the full benefit for ten years, if four feet deep; or for seven years, if two feet deep—one-tenth or one-seventh part of the necessary cost, to be estimated as aforesaid, of such beneficial draining for every year wanting to make up such beneficial occupation of ten years or seven years respectively (u); all such payments and allowances to be subject to any deductions for dilapidations throughout the farm, [and to be dependent upon the tenant having obtained from the landlord or his agent a consent, in writing, to the performance of such draining, such consent to specify the maximum amount to be so expended] (x).

The lease shall contain provisoes that no local custom or customs of the country shall be of any force or validity, as between the parties to it, but that all their rights and obligations shall depend only upon the terms of the lease and the general law of the land; and further, that in case of non-payment of any of the rents within two months after the same shall become due [although no legal or formal demand of the rent shall have been made] (y), or in case of breach of any of the covenants, if after three weeks’ notice of such breach given it be not remedied, or in case of bankruptcy or insolvency of the tenant, or any writ of execution executed upon

(u) These figures are not suggested for adoption. The parties will of course make their own bargain as to the depth of the drains, and the number of years’ enjoyment

which will compensate their cost.

(x) As to buildings, &c., see a form of stipulations among the Miscellaneous Stipulations, No. 128.

(y) See *ante*, p. 170.

the goods of the tenant, the lease shall be at an end : and the landlord shall [have the same powers to] re-enter and re-take the premises [as the sheriff would have under a writ of *habere facias possessionem*, or other process issuable for recovery of possession after judgment obtained in ejectment, and that in case of such entry the landlord or any person whatever acting in his behalf, may to any action brought, plead leave and license in bar thereof, and that the lease, or in case the tenant shall be let into possession before the lease is executed, then this agreement shall be conclusive evidence of such leave and license] (z). But that, notwithstanding any such forfeiture and re-entry, the tenant shall still be entitled to all outgoing allowances as before-mentioned, subject to rebate for dilapidations. And it is further agreed between the parties to this agreement, that the agreement shall not have the effect of a present demise, but shall operate only as an agreement for a future lease. And further, that, if at any time previous to the execution of the contemplated lease, the said John Styles shall admit the said Richard Nokes to the possession of the said farm or any part thereof, the tenancy shall be subject to all the rents, provisions, covenants, and provisoes hereinbefore set forth. In testimony whereof, we have hereunto set our hands the day and year first above written.

JOHN STYLES.

RICHARD NOKES.

No. 2.—*Short Form of Agreement for Lease for a Year.*

AGREEMENT FOR A LEASE.

[This has been drawn so as to come within fifteen folios, and requires only a stamp of 2s. 6d. The recent alteration in the stamp law however renders conciseness of less importance, and this form will therefore be seldom now adopted.]

"A. B. of \_\_\_\_\_, in the county of \_\_\_\_\_, esq., and  
C. D. of \_\_\_\_\_, in the county of \_\_\_\_\_, yeoman, hereby

(z) See *Kavanah v. Gudge*, 1 D. & L. 928. If this very stringent power is not intended to be given to the landlord, omit the words between brackets. And see also p. 243, *ante*.

agree that the said A. B., the landlord, shall, by a future demise, but this agreement is not to operate as such demise, let, and the said C. D., the tenant, in like manner agrees to take, from the       day of       next, from year to year, the Grange Farm in the parish of Alveley, containing one hundred acres, as the same and its appurtenances are now enjoyed by the present tenant, at the yearly rent of 100*l.* payable quarterly, in advance if demanded, but if not so demanded then at the landlord's audit. The landlord reserves all trees, minerals, game, and fish. The tenant shall neither commit nor suffer waste, either voluntary or permissive, and shall conduct all the operations of the farm according to the best system of modern husbandry without reference to the custom of the country, and shall occupy and keep the premises in a proper and tenantable manner; shall pay all allowances to the outgoing tenant as they shall be fixed by the valuers or umpire, and shall receive allowance upon the same principle when he himself shall leave upon producing the valuation made at his entry; shall pay all taxes and assessments, parliamentary, parochial, or otherwise; shall insure the farm buildings and rebuild if burnt down, and shall repair when the landlord provides timber for the purpose; shall not assign or underlet, but shall live on and personally cultivate the farm; [shall cultivate the arable land on an equal four-field course so that not more than one half the land may be in corn in any one year, and one-fourth in fallow crops, and one-fourth in seeds; and two corn crops may never occur in succession, unless when the seeds accidentally and without fault of the tenant may happen to miss;] shall consume all hay, straw, and fodder with cattle on the farm, and expend all the manure so produced upon the farm; shall enter upon the meadow land on       , on the pasture at       , on the arable at       , and on the house and buildings at       , and shall quit in like manner, in the last year of his tenancy, all valuations or disputes to be settled by the arbitration of two valuers and an umpire; but in case of the commission of any waste, either permissive or voluntary, or any breach of stipulations, or non-payment of rent for one month after the same is due, the landlord shall have the same power to re-enter as the sheriff has under a writ of *habere facias possessionem*,

and the lease or this agreement shall operate as a license to the landlord, or any person whatsoever acting in his behalf, for entering and taking possession and expelling the tenant or any other person in possession. That if the tenant be let into possession after this agreement signed, and before a future lease made, the tenancy shall be considered to be upon the terms herein set forth, and shall be subject to no custom of the country, but only to these expressed stipulations and the general law.

“A. B.

“C. D.”

This agreement should be signed but not sealed, nor witnessed.

### No. 3.—*Form of Proposal to take.*

[The following form will require no stamp, and will, under the authority of *Drant v. Brown*, 3 B. & C. 665, be evidence of a parol contract. It must be signed only by the tenant; but there should be a parol acceptance by the landlord, and evidence preserved of this fact.]

“I, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, yeoman, do hereby propose to take of C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_, esq., the farm called the Grange Farm, containing \_\_\_\_\_ acres, and situate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, upon the terms following, that is to say:—

“The tenancy to commence from the \_\_\_\_\_ day of \_\_\_\_\_ next, and to be from year to year.

“The rent to be \_\_\_\_\_ l., payable quarterly.

“The tenant to, &c., &c. [*insert tenant's obligations from the Miscellaneous Stipulations, post*].

“The landlord to, &c., &c. [*insert landlord's obligations*].

“And it is to be a condition of the tenancy, &c., &c. [*insert provisoes for re-entry*].

“A. B.”

No. 4.—*Form of Lease from Year to Year (with Provision for Way-going Crop).*

[The agricultural provisions of the following form of a lease from year to year have been settled by Mr. Bennett, of Tutbury, who considers them to be perfectly adapted to the midland counties, and fair between landlord and tenant.]

1. **Parties.** THIS INDENTURE, made the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-one, between O. M., of \_\_\_\_\_, in the county of Stafford, esq., of the one part, and J. D., of Tutbury, in the said county, yeoman, of the other part,
2. **Demise.** Witnesseth that the said O. M. (hereinafter described as landlord), in consideration of the payment of the rents herein reserved, and the performance of the conditions and agreements herein contained on the part of the said J. D. (hereinafter described as tenant), and his heirs, executors, administrators, and assigns, to be by him and them performed, fulfilled, and kept, doth for himself, his heirs, executors, and administrators hereby set and to farm let unto the said tenant and his executors, administrators, and assigns, all the lands and buildings specified in the schedule of parcels hereto situate in the parish of Bromley, in the said county of Stafford, together with all the fixtures set forth in the schedule of fixtures thereto.
3. **Reserves.** Reserving all mines, and minerals, and quarries, and beds of gravel, clay, marl, and sand. And also all timber and other trees, and fruit trees, and all bodies, loppings, and tops of willow and other pollards, except such as the landlord may allow to be cut for gates, rails, or other uses on the premises, but not further, and all saplings and underwood, with liberty at all times and by any means to take and carry away the same.
4. **Game.** Reserving also the exclusive right to all game and fish upon the said premises, with the liberty for him-

self and others, by his authority, to enter upon and inspect the premises, and also shoot, fish, and sport thereon.

5. *Habendum.*

To hold from the day of the date hereof for one year, and so from year to year until this lease shall be determined by either party, by notice in writing, on or before the twenty-ninth day of September prior to the end of the first or any subsequent year, or until the said lease be otherwise determined, as hereinafter mentioned and provided for, as the case may be.

6. *Redden-  
dum.*

Yielding and paying therefor yearly during the continuance of the term the rent or sum of 100*l.*, (to include land tax and all tithe rent-charges, the landlord undertaking to discharge the same), by four equal quarterly payments, on every twenty-fourth day of June, twenty-ninth day of September, twenty-fifth day of December, and twenty-fifth day of March; the first payment thereof to begin and be made one quarter in advance, and all subsequent payments to be considered as due and payable as and for the then next quarter, and shall be recoverable accordingly.

7. *Turf.*

And also yielding and paying the additional or contingent yearly rents following, that is to say, the sum of fifty pounds for every acre, and so in proportion for any less quantity of the lands described in the said schedule as pasture land or meadow or mowing land, which shall be broken up or converted into tillage, without the landlord's written consent.

8. *Mowing.*

The sum of ten pounds for every acre, and so in proportion for any less quantity of the lands described in the said schedule as pasture land, which at any time during the continuance of this agreement shall be mowed without the like written consent.

9. *Manur-  
ing.*

The sum of ten pounds for every acre, and so in proportion for any less quantity of the lands described in the said schedule as meadow or mowing land which shall be mowed oftener than once in a year, or more than two years, whether in succession or otherwise, without being sufficiently top-dressed with

good rotten dung, or lime and soil, or other good compost, or irrigated.

10. Arable. The sum of ten pounds for every acre, and so in proportion for any less quantity of the lands described in the said schedule as arable land, which shall be sown two successive years with the same description of grain, or upon which more than two white corn-crops shall be raised in succession, or which shall not be sown with a sufficient quantity of good clover, and other suitable grass seeds, with or upon the first or second year's corn, after every fallow; or of the clover and other young grasses which shall not be kept in turf for one year at least, from and after the reaping or mowing of the corn, with or upon which the seeds of such clover or other young grasses may have been sown as aforesaid; or which shall not have a good dead summer fallow, or a good clean turnip, or other vegetable fallow immediately after every third crop of corn or grain in any course: provided, nevertheless, that a fourth crop of corn shall be allowed to be taken in any course commencing with a dead summer fallow where the clover crop after such fallow shall have been grazed, and where the third crop of corn after such fallow shall have been beans dibbled or drilled and well hoed and cleaned, and in the preparation for which bean crop there shall have been laid and spread on the land not less than ten full cart-loads (of the usual size) of good dung in a suitable state on an acre, and so in proportion for any less quantity.

11. Fodder crops and manure.

The sum of five pounds for every ton in weight, and so in proportion for any less quantity of turnips, potatoes, or other green crops, or of hay, straw, stubble, manure, compost, gravel, clay, marl, or sand, produced upon or arising from or out of the said premises, which shall be sold or taken or carried off the same without the landlord's consent in writing.

12. Fallows. Also the sum of ten pounds for each and every acre, and so in proportion for any less quantity of dead summer fallow, whether the same be for wheat



or barley, which shall not be well worked and cleaned, and on which there shall not be brought and used at least twelve quarters or three tons of well-burnt lime; or of fallow for potatoes, turnips, or other vegetable crops on which there shall not be used at least fifteen full cart-loads (of not less than the usual size) of good dung per acre, or in lieu thereof such quantity of guano or other artificial manures as the landlord or his agent may prescribe; or of clover or other artificial grasses, whether the same be mowed or pastured, which shall not be dressed with at least ten such cart-loads of good dung, or twenty such cart-loads of good compost per acre, during the first year after the reaping or mowing of the corn with or upon which such seeds may have been sown.

13. To be additional rents.

Which said additional or contingent rents (if any accrue) shall be paid on the several quarterly days of payment hereinbefore mentioned, and the first payment thereof respectively shall be made on such of the said days as shall first happen after the circumstance, event, or act shall take place, be committed or omitted, upon the happening, doing, or omitting whereof the same are respectively made payable, and shall remain payable during the continuance of the tenancy; and the same shall in all respects be deemed to be ascertained additional rent, and not in the nature of a penalty.

14. Covenants by tenant.

And the tenant, for himself, his heirs, executors, administrators and assigns, hereby covenants, promises and agrees to and with the landlord, his heirs and assigns, as follows; that is to say, that he will duly pay the said rent of 100*l.*, and also the said several additional or contingent rents (when the same accrue), at the days and in the manner aforesaid; and also will bear and discharge all parochial and other outgoings payable in respect of the premises, except the land tax, tithe rent-charges, and landlord's property tax. And that he will reside upon and cultivate the said lands and premises in a good and husbandlike manner, according to the best modern system of husbandry, and without reference to any usage in the

14. Taxes, &c.

15. Fodder crop.

- neighbourhood or custom of the country which may not be in accordance with the best modern system of husbandry. And that he will not sell, take, or carry away, or otherwise dispose of, any hay, straw, turnips, potatoes, or other green crops, or any manure or compost, which shall have arisen or been made upon the premises; but will, from time to time, in a good and husbandlike manner, use, spend, and employ the same thereon; and at the expiration of the tenancy will leave on the premises all such hay, straw, stubble, manure, and compost as shall have arisen or been made upon the premises, or have been brought thereon, and which shall not have been eaten, consumed or employed, without having any compensation in respect of the same, except as to hay (if there be any), for which the tenant shall receive the fair value thereof, to consume on the premises. And also that he will not cut any of the hedges belonging to the premises otherwise than in a husbandlike manner for the improvement thereof, nor commit any act of waste whatever by excessive or improper ploughing, cropping, or mowing, but will well and effectually plough, clean, and cultivate the arable lands, and keep properly scoured and opened all the ditches, drains, gutters, and water-courses on the premises, and regularly carry away and spread the cleansings thereof. And also will keep in good and proper state the several roads and ways, gateplaces, and watering places, and at all times well and sufficiently repair, uphold, maintain, and keep the farmhouse, outbuildings, and all gates, stiles, fences, bridges, drains, and culverts in, upon, under, and belonging to the premises, in good and tenantable order, repair, and condition, (accidents by fire or tempest, and other inevitable accidents excepted,) being allowed by the landlord, bricks and lime at the kilns, and timber in the rough for such repairs, and also tiles at the kiln for the repairs of buildings previously tiled; and also will carry the materials required for all future repairs of the premises, whenever and so often as the landlord, his agent, builders, or
16. Hay.
17. Waste.
18. Repairs.

19. **Game.** workmen, may require the same. And also, that he will not take or destroy the game or fish, nor take or destroy the eggs or young of any game on the premises, nor allow others to sport or fish, or take or destroy any such eggs or young thereon, without the authority in writing of the landlord, or his heirs or assigns, or his or their agent for the time being, the tenant himself nevertheless being allowed to take for his own use and benefit the rabbits on the premises, by means of nets and ferrets only, during the months of November, December, and January in each year, and not by dogs and guns. And also, that he will, when and so often as he may be requested by the landlord, or by his agent or solicitor, sign proper notices of discharge to persons trespassing on the premises, and allow actions to be brought and prosecutions to be carried on in his name, against any trespasser or trespassers, lay informations when required, appear and give evidence, and take such other proceedings therein, at the instance and expense of the landlord, as may be necessary in law to sustain such informations, actions, or prosecutions.

**MUTUAL  
COVENANTS:**  
20. Outgoing  
crop.

And it is mutually agreed, that for and in satisfaction for all lime and manure of any description purchased and used on the said farm, and for all ploughing and dressing of the wheat fallows, and for the tenant's share of all wheat that may be sown in the autumn preceding the determination of the tenancy, the tenant shall be entitled to, and shall receive and accept two thirds of the value (not including the straw, which is to be taken as equivalent to the expenses of cutting, carrying, threshing, and marketing) of all wheat crops which may have been sown on dead summer fallow; and one half the value (not including the straw) of those having been sown after clover, vegetable crops, or beans dibbled or drilled upon land prepared for the same, with not less than ten full cart-loads (of the usual size) of good dung per acre, and afterwards well hoed and cleaned, provided such last-mentioned wheat crops, after clover,

vegetables, or beans dibbled or drilled on land prepared as aforesaid, together with the dead fallow wheat of the same season, shall not in the whole (including the roads and fences within and belonging to such wheat fields) exceed in quantity one third of the arable land on the said farm.

31. Out-  
going  
allowances.

And it is further mutually agreed, that no claim whatever shall be made by the tenant, nor allowed by the landlord, for or in respect of any wheat crop exceeding the said quantity of one third of the arable land on the farm, nor for any wheat which may have been sown upon any white corn stubble or bean stubble, unless the beans shall have been dibbled or drilled and afterwards well hoed and cleaned, and unless the same shall have been sown on land dunged as hereinbefore required, although the quantity of wheat on the whole may be within the quantity of one third of the arable lands allowed to be sown with wheat, as hereinbefore mentioned. And if it shall happen that any of the dead fallows on the farm in the last year of the tenancy shall have been for barley instead of wheat, then in every such case the tenant shall be paid a year's rent and taxes of the land, and also for ploughing and cleaning the same, and for gripping and letting off the water, and also for any lime which may have been used thereon, including the carriage. The valuation of the said wheat crop or crops, in which the tenant may have any interest, to be made the first week in the month of July next after the tenant's quitting, and the money to be paid for the same on the first day of January then next following.

32. Land-  
lord's  
covenant.

And the landlord, for himself, his heirs, executors and administrators, hereby promises and agrees with the tenant as follows, that is to say, that he will pay the land tax and tithe rent charges due and payable in respect of the premises, and for the tenant's share of the wheat crops, and for the barley fallows (if any), and for the unconsumed stock of hay on the premises, if any, in the manner and proportions hereinbefore

agreed to be allowed for the same respectively: and also the cost price of the clover or grass seeds sown in the spring preceding the determination of the tenancy, provided the same shall not have been depastured with any kind of stock whatever. And also such further allowance in consideration of any sum or sums of money expended by the tenant, with the knowledge and consent of the landlord, in actual and permanent improvements of or on the premises for which he shall not have had reasonable benefit.

23. Arbitration.

And in case the parties disagree as to the amount of any payment or compensation to be made by the landlord by virtue of any agreement or stipulation herein contained, the same shall be determined by two arbitrators, or an umpire to be chosen by the arbitrators before they enter upon the business of the arbitration; and if either party shall refuse or neglect to nominate and appoint a person to value and arbitrate on his behalf after one week's notice, it shall be lawful for the person appointed by the party giving such notice, solely and separately to make the valuations, and his award and determination shall be binding and conclusive.

24. Entry.

And the tenant further agrees, that it shall be lawful for the landlord, or the incoming tenant, at any time after the twenty-fifth day of December preceding the determination of the tenancy, to enter upon such of the arable lands as may be stubble, clover seeds or young turf, to perform any acts of husbandry thereon, without making any compensation; and also, at any time after the same day, to enter upon any part of the premises, to carry out dung, and to cut the hedges, and to open and scour the ditches, and to perform any other usual act or acts of husbandry on the farm.

25. Water-meadows.

And further, that the water meadows, if any, shall be given up to the landlord, or incoming tenant, on the first day of November; and the other meadows, or usual mowing ground, on the second day of February preceding the determination of the tenancy; without compensation.

26. Hedges,  
&c. And that he will not at any time during the last half year of the tenancy cut any of the hedges belonging to the premises, nor take in for hire or depasture, or keep on the premises, any other than his regular stock of cattle, except what may be fed in the foldyard.

27. To quit. And, lastly, that he will, at the determination of the tenancy, peaceably quit and deliver up the full possession of the premises in good substantial and tenantable order, repair, and condition.

28. Re-entry. Provided always, and it is hereby declared and agreed, that if the tenant shall assign, underlet, or part with the possession of any part of the premises without the consent in writing of the landlord or his agent, or if he shall not duly perform and keep the covenants herein on his part contained, or shall be declared a bankrupt, or shall sign any declaration of insolvency, or make any application to any bankruptcy or Insolvent Debtors Court under or for the benefit of any Act of Parliament relating to insolvent debtors, or make any assignment of his effects for the benefit of his creditors, or shall make any composition with his creditors; or if the said premises or any part thereof, or the tenant's term or interest therein, shall be seized, extended, or taken in execution; then, and in any of the said cases, it shall be lawful for the landlord, upon or at any time after the twenty-fifth day of March then next following, to re-enter upon the said premises, and the same to repossess as fully and effectually as if due notice had been given to determine the said tenancy.

Provided also, that no custom of the country shall have any operation upon the tenancy created by this lease, but the rights of the parties shall depend only upon the terms of this indenture and upon the general law.

And provided also, and it is lastly hereby declared and agreed, that throughout this lease, all covenants by the said landlord shall be construed to be covenants made by the said O. M., for himself, his heirs, executors, administrators, and assigns, to and with the

said J. D. his executors, administrators, and assigns. And all covenants made by the said tenant shall be construed to be covenants made by the said J. D., for himself, his heirs, executors, administrators, and assigns, to and with the said O. M., his heirs and assigns.

In witness whereof the said parties have hereunto set their hands and seals.

O. M. (L. S.)

J. D. (L. S.)

Signed, sealed and delivered, by the }  
said O. M. in the presence of } A. B., of, &c.

Signed, sealed and delivered, by the }  
said J. D. in the presence of } C. D., of, &c.

Schedule of Parcels hereinbefore referred to.

<i>Homestead, &amp;c.</i>				<i>Pasture Land.</i>				<i>Meadow or Mowing Land.</i>				<i>Arable Land.</i>			
Parcels.	Quantities.			Parcels.	Quantities.			Parcels.	Quantities.			Parcels.	Quantities.		
	A.	R.	P.		A.	R.	P.		A.	R.	P.		A.	R.	P.

A. R. P.

*Total Quantity of the Farm .*

Schedule of Fixtures belonging to the Landlord.

SECT. 2.—*General Collection of Stipulations for Agreements.*

Commencements, Premises, &c., Nos. 1 to 4.—Habendum, 5 to 9.—Reservations, 10 to 15.—Reddendum.—Money Rents, 16 to 19.—Corn Rents, 20 to 23.—Additional Rents, 24.—Tenant's Covenants, Rent, Taxes, Repairs, Insurance, 25 to 38.—Against Wasts, 39 to 41.—Buildings, 42 to 44.—Fences, 45 to 47.—Trees, 48 to 50.—Game, 51 to 56.—General Obligations as to Culture, 57 to 70.—Specific Stipulations as to Culture, 71 to 89.—Manure, 90 to 96.—Injurious Plants, 97 to 100.—Miscellaneous Stipulations, 101 to 108.—Outgoing and Incoming, 109 to 120.—Outgoing Allowances for Improvements, 121 to 128.—Allowances for Game, 129.—Provisoos and Conditions, 132 to 140.

The following stipulations have been extracted from a mass of agricultural agreements in use throughout the kingdom ; and it is considered that there is scarcely any circumstances of tenancy which an agreement may not be framed to meet either by following one of the foregoing forms, or by going through these stipulations, marking the numbers which apply and having them copied out consecutively.

1. *Commencement.*—An agreement made this       day of       , 18       , between A. B. of       in the county of       , the landlord of the premises which form the subject of this agreement, and C. D. of       in the county of       , the tenant of the said premises which form the subject of this agreement.

2. *Operative Words.*—The said landlord who throughout this agreement agrees, for himself, his heirs and assigns, agrees to let, and the said tenant who throughout this agreement agrees for himself, his executors, administrators, and assigns, agrees to take.

3. *Premises.*—All that the farm, farm house, and premises, situate in       in the county of       , and called the       Farm, and which consists of the fields, closes, and homesteads, which are designated in the Tithe Apportionment Map by the following numbers, that is to say, Nos.       , as the same is now occupied by       , with all rights and appurtenants as the farm has been hitherto enjoyed by the said       .



4. *Lease to be made.*—And it is agreed between the parties hereto that a lease shall be made at their joint expense, which shall contain the following reservations, covenants, provisoes, conditions, and agreements.

5. *Habendum.*—(*Michaelmas Tenancy.*)—That the tenant shall hold the said farm, lands and premises from the 29th of September, 18 [if from old Michaelmas-day, say 11th October], for one year, and so from year to year until the tenancy be determined by either party giving to the other eighteen months' notice in writing to quit, such notice to expire on the 11th October of the year next succeeding that in which the notice is given [if the ordinary six months' notice only be contemplated, say "six months' notice to quit, such notice to expire at the end of the first or of any succeeding years' tenancy"] ;

or,

6. The term of the lease to be for                    years, from the 29th of September, 18    ;

or,

7. The term of the lease to be for                    years, from the 29th of September, 18    , determinable by the tenant at the end of the first seven or fourteen years of the said term by giving                    months' notice in writing.

8. *Right of Pre-entry.*—The tenant enjoying before the period of the commencement of his tenancy such right of pre-entry for farming operations as it is hereafter stipulated that he shall allow to the landlord or to the succeeding tenant in the last year of the tenancy hereby contemplated.

or,

9. The tenant enjoying as an incomer the same right of pre-entry which it is hereafter stipulated that he shall allow as an outgoer.

10. *Reservations to Landlord.*—The landlord will except from the lease and reserve to himself

11. All game, rabbits, fish, and wildfowl ;

12. All minerals, quarries, chalkpits ;

13. All trees, bushes, and thorns ;

14. Free ingress and egress at all times upon the land for himself and all persons authorized by him to sport, to lay

materials for repairs, to plant, transplant, or fell or carry away trees, to view the state of culture or condition of the farm, to open pits for earth or water, to take away marl, clay, or other earth, or burn bricks or tiles, and to make and work mines, making reasonable compensation to the tenant where damage above 40s. shall be done ;

15. And free ingress and egress at all convenient times to the dwelling-house and buildings, to view the condition thereof, and to make repairs.

16. *Reddendum*.—Paying the yearly rent of       *l.* ;

17. And also the amount of the rent-charge in lieu of tithes on the said farm.

18. And also an additional rent of 20*l.* per acre during the continuance of the tenancy for every acre of land broken up or farmed contrary to the covenants.

19. The tithe rent-charge and additional rent to be recoverable by distress or otherwise in the same manner as the original reserved rent ;

*or,*

20. *Corn Rents*.—Paying a yearly rent, varying with the price of wheat and barley in the market, of       ; that is to say, when the average price during one whole year next preceding (from the 1st of January to the 31st of December, or so near to these two dates as the average shall be struck) shall amount to       the rent shall be       *l.*, and to rise or fall       per cent. with every rise or fall of one shilling above or below ;

*or,*

21. But it is agreed that the lease shall recite and provide that the said rent of 100*l.* is fixed on the assumption that the price of wheat is 50*s.*, barley 30*s.*, and oats 20*s.* per quarter ; which prices would give a price of 12*s.* 6*d.* for three bushels, consisting of one bushel of wheat, one bushel of barley, and one bushel of oats. But, inasmuch as it is expedient that the rent shall vary with the average price of corn, the rent before mentioned shall vary four per cent. for every variation amounting to 6*d.* in the average price of the said three bushels ; the standard price of the said three bushels to be 12*s.* 6*d.* as aforesaid, and the average price of corn to be taken to be the

average of the imperial averages for the two years next preceding the Christmas-day which precedes the day on which the rent becomes due.

or,

22. But that whenever the average aggregate price (taken from the imperial averages for two years [*or any other number of years*] next preceding the Christmas which comes next before the day on which the rent becomes due) of one bushel of wheat, one bushel of barley, and one bushel of oats shall exceed or fall below 12*s.* 6*d.*, the said reserved rent shall rise or fall four per cent [*or, if it is wished, to make one half of the rent a permanent money payment, say "two per cent."*] for every 6*d.* of excess or decrease (*b*).

23. *Tithe Rent-charge*.—And also the amount of the tithe rent-charge, to be due to the landlord, and to be recoverable by him by distress or otherwise, on the quarter-day preceding the day on which it accrues due to the titheowner (*c*).

24. *Additional Rents*.—Yielding and paying for the said premises the yearly rent of pounds shillings in four quarterly payments on the twenty-

(*b*) It is quite immaterial what standard is taken, so that the rent is properly adjusted to it. The 12*s.* 6*d.* standard however is very convenient for computation. The following table may be referred to in the agreement, or indorsed upon it, or both.

TABLE.

When the price of three bushels—1 wheat, 1 barley, and 1 oats,—on the average of any two preceding years, is		The value of £100 rent will be	
<i>s.</i>	<i>d.</i>	<i>£</i>	<i>s.</i> <i>d.</i>
14	0	112	0 0
13	6	108	0 0
13	0	104	0 0
12	6	100	0 0
12	0	96	0 0
11	6	92	0 0
11	0	88	0 0
10	6	84	0 0

(*c*) The simpler plan will be for the landowner to include the tithe rent-charge in the rent. These provisions are only inserted for the adoption of such landlords as enter-

tain objections to make the tithe rent-charge a portion of the rent. Tithe rent-charges are not due on the quarter-day; but on the first of the succeeding month.

fourth day of June the twenty-ninth day of September the twenty-fourth day of December and the twenty-fifth day of March; the first payment being made on the twenty-fourth day of June in this present current year and all payments of the said rent to be free from all land-tax, tithe-rent-charge, rates, taxes, parliamentary, parochial or otherwise; and all other deductions or other charges whatsoever chargeable on the said premises or the landlord or tenant of the same, except the landlord's property or income tax, and with such power to the said landlord, his heirs and assigns, to distrain for said rent whenever unpaid as is incident to a landlord on rents reserved on leases for years; AND also a further rent of twenty pounds an acre, and so in proportion for any greater or less quantity than an acre of the meadow or pasture land now on the said farm, or of any other land hereafter converted into meadow or pasture, which shall have been continued as such during four summers which the said tenant shall pare, burn, break up or convert into tillage: or for any of the said lands beyond one-third of the total quantity of the said farm which shall be in tillage at one time without leave in writing from the said landlord or his agent: and ten pounds per ton, and so in proportion for any greater or less quantity than a ton, of any hay, straw, clover, mangelwurzels or turnips which the said tenant shall sell or allow to be removed from off the premises. Which said several additional rents shall be paid and payable along with and recovered and recoverable with and in the same manner and way as the said original rent; the first payment of such additional rents to begin and be paid on such of the said days hereinbefore appointed for payment of such original rent as shall next happen after such additional rent shall become chargeable.

*Tenants' Covenants.* The tenant shall covenant

25. *To pay Rent.*—To pay the rents in equal fourth parts, on the 24th December, the 25th March, 24th June, and the 29th September;

or,

26. To pay the rents in equal moieties half-yearly, as they become due;

or,

27. To pay the sum of       *l.* on the 6th of April, yearly,

and the residue of the rent on the 11th of October, yearly ; or so soon after as the average price of wheat and barley for the preceding year [*or, the three preceding years*] can be obtained.

28. *To pay Taxes.*—To pay all taxes, parliamentary, parochial, or otherwise.

29. *Repairs.*—To keep and leave in repair the windows, gates, gate-irons, and fences ; the pump gears and the locks and bolts in the dwelling-house [*or, to keep and leave in repair the outbuildings and dwelling-house*] ; [*or, to keep and leave in repair the outbuildings and dwelling-house, except only the outer walls, the landlord finding timber in the rough.*]

30. To make good all damage done to the premises by himself, or his family or servants, or by his stock, whether by carelessness or otherwise, or by strangers through his negligence.

31. *Insurance.*—To insure buildings from fire in the — fire office, for £ ; and to expend all moneys received in the reconstruction of buildings consumed—such reconstruction to be made under the direction of the landlord.

32. *Repairs.*—To cart materials for repairs within miles of the farm.

33. To cast, cart, and tread clay, for repairs.

34. To lay marl or clay round the foundations of the buildings.

35. To pay a moiety of workmen's wages for doing repairs, and to find allowance-beer for workmen so employed.

36. To find winter corn straw for thatching, gratis ; or, if the landlord elect, to use reed, then to pay half the cost thereof.

37. To keep a ladder to reach four feet above the eaves of any of the buildings.

38. To pay £ per cent. yearly interest on money expended for new walls or buildings, if done at the request of the tenant. Such interest to be additional rent, and recoverable by distress or otherwise, in the same manner as the original rent reserved.

39. *Against Waste.*—Not to open pits or carry off earth from the premises without leave.

40. Not to commit or suffer any waste, either voluntary or permissive.

41. Not to cut flags or turf (d).

42. *Buildings*.—Not to erect any buildings without leave in writing from the landlord.

43. To pay l. per cent. interest on money expended for new walls or buildings, if done at the request of the tenant; the same to become due as additional rent, and to be recoverable by distress or otherwise, as the original rent is recoverable.

44. Not to affix threshing or other machinery to the buildings, without leave (e).

Not to lay any grain in the dwelling-house.

45. *Fences*.—To draw water-fences yearly between Michaelmas and Christmas, and to bottomfy them when requested.

46. To keep river banks in repair, and cut weeds yearly.

47. Not to break up or carry away any of the backs or borders of fences nearer than five feet from the spring.

48. *Trees*.—Not to plough nearer than five feet to any tree.

49. Not to cut down or carry away any trees, stands, or underwood, nor cut down buckstall, nor cut down fences, nor cut thorns off fences without leave.

50. To preserve all the fruit trees and bushes.

51. *Game*.—Not to shoot or destroy any of the game, fish, rabbits, or waterfowl on any of the lands, or suffer others to do so without leave.

52. Not to mow any wheat: nor to take off any haulm before the 1st of October, without leave.

53. To preserve all game, fish, rabbits, and waterfowl, and all eggs and young thereof, for the use of the landlord.

54. To permit landlord to bring actions in the name of the tenant against persons for trespassing, indemnifying the tenant, and to prosecute or discontinue the same without the interference of the tenant.

55. To preserve all game. The pheasants to be entirely preserved for the landlord, and the partridges to be preserved

(d) See general obligations as to culture, *post*.

(e) The jar of machinery will shake down ordinary farm buildings.

for the landlord until the first of November; but, save as aforesaid, the right of sporting to be enjoyed by the landlord and tenant.

56. To protect game, rabbits, wild ducks, and wildfowl of every description, including woodcocks, snipes, plovers, and others, together with the young and eggs thereof, the whole to the uttermost, for the landlord, or those he may empower, to hunt, course, or kill the same in any manner or way; and not to shoot at, nor kill, nor wilfully molest any of the foresaid, nor permit others to do so knowingly, under the penalty of 10*l.* sterling for each breach of this stipulation and agreement, and to be answerable for his servants and cottagers so far as it lays in his power so to be; not to burn, in any one year of the term, more than one fourteenth part of the heath on the lands, nor at any time burn those parts which the landlord or his gamekeeper may wish to preserve, and that under a penalty of 2*l.* for every acre which may be so burned; also not to make claim for any damage accruing by reason of the landlord keeping any stock of game, rabbits, wild ducks, or wildfowl of any sort he may please, on the farm, or within the waters thereof, such having been considered when fixing the rent, and allowance made accordingly; not to keep any dogs but a watch-dog, which is to be kept chained and on no account permitted to ramble through the farm; not to keep any guns on the lands, but a single gun in the farm house for the protection of the premises.

#### *General Obligations as to Culture.*

57. *Not to occupy other Land.*—Not to possess or occupy any other land within four miles of the farm (*f*).

58. *Residence.*—To reside in the dwelling-house and cultivate the farm, and not to assign or underlet any of the lands or premises.

59. To cultivate and manage the farm according to the best and most approved system of husbandry known and generally

(*f*) Many landlords insist upon this proviso: for if the tenant has land of his own adjacent to the farm he rents, that land will probably

have more than a fair proportion of the manure laid upon it, unless the landlord can watch every dung cart that goes out of the yard.

accepted throughout the kingdom, and without reference to the practice of the immediate neighbourhood.

60. *Grass Lands*.—Not to break up any permanent grass lands [*it is prudent to schedule these, or to refer to the fields by their numbers on the tithe-apportionment map*].

61. To cut down weeds on pastures and fences once a year.

62. Not to mow any land on which seeds shall be sown more than once after it has been laid down to grass (*g*).

63. Not to mow a greater proportion than a moiety of the grass lands more than once a year.

64. Not to mow pastures two years in succession, nor more than one-third yearly [*the pastures should be scheduled, or their numbers on the tithe-apportionment map inserted*].

65. Not to cut clover for hay (*h*).

66. That on all land laid to grass the grass seeds shall be sown with the first crop immediately following summer fallow, fallow crops, or pulse crops (*i*), and shall consist of at least ten

(*g*) The best security, generally speaking, to the landlord, against over-cropping, is the providing for a due proportion of the arable land being each year in grass. But the effect of the cultivated grasses and clovers upon the good order of the farm differs according to the mode of consuming them. It is greatly better that they be used as green forage or herbage to be consumed upon the farm, than made into hay which is carried away from it. In some cases, a tenant is prohibited from raising hay for sale. Particular cases may require such a restriction; but, in many others, the disposal of hay is calculated upon as a branch of ordinary profit. We must be guided by circumstances, then, in imposing this restriction; although it must always be kept in mind that a hay crop, carried away, is even more exhausting to the general fertility of a farm than a crop of corn or pulse, of which the seeds only are removed. But although the raising of hay for sale may in certain cases be prevented, there ought to be no prohibition of the raising of hay to be consumed upon

the farm. When land, however, is kept in a regular rotation of crops, the provision should always be introduced, that no more than one crop of hay shall be taken from any land laid to grass; the opposite practice being only allowable in the case of land which is kept permanently in meadow. In cases of a rotation of crops, the first crop of new grass may be made into hay; but the after-math, and the land in every subsequent year, should be depastured. The lease should therefore provide that no land on which grass seeds are sown shall be used for hay more than once after having been laid to grass.—*Low*.

(*h*) "The cutting clover for hay is, in my opinion, little if at all better than taking another corn crop."—(*Badcock's Practical Observations on the Husbandry of East and North Cornwall*, p. 5.) I must add, however, that I believe there is some difference of opinion among agriculturists on this point.

(*i*) The suitable period of the course for sowing grass seeds is when the land is in good order and clear, and this will be with the first



pounds of white clover and two pecks of good rye-grass seeds to the standard acre (*j*).

67. To clip fences next public roads yearly (*k*).

68. Not to throw down or erect any fences without leave in writing from the landlord.

69. To do such upland fencing and ditching yearly (not exceeding one-tenth) as the landlord may direct.

70. To hurdle against new fences adjoining land where stock is depastured.

### *Culture Stipulations.*

71. *Special Culture Stipulations.*—The tenant shall keep and leave the arable land clean, free from weeds, and in good heart and condition, and shall not grow two white straw crops [*or*, two grain crops of the same kind] (*l*) in succession on any

crop after fallow crop, or summer fallow. In the case of the four and five year courses, the provision may be, that on all land laid to grass, the grass seeds shall be sown with the first crop, immediately following summer fallow or fallow crops. But when pulse crops are introduced into the rotations, the land may be in sufficient order after such crops to have the grass seeds sown upon it.

When pulse crops, then, enter into the rotation, the stipulation may be that on all land laid to grass, the grass seeds shall be sown with the first crop, immediately following summer fallow, fallow crops, or pulse crops.

(*j*) It is strictly the province of the farmer to select the seeds which he sows; but, in the case of grass seeds, the landlord has an interest in having them of the proper kinds, especially when the land is to remain more than one year in grass. It is usual, therefore, to make a general stipulation as to the kinds of these seeds, whether grasses or clover. The stipulation in the text might be made to vary for land which is to be only one year in grass, and that which is to be in grass for more

than one year; but this general stipulation will suffice in practice. The quantity of two pecks of grass seeds per standard acre is indeed too small in ordinary cases; but the tenant has the power of using a larger quantity, or of adding any other kinds which he chooses to cultivate, as cocksfoot, meadow-fescue, rough-stalked meadow-grass. The provision is merely designed to ensure a proper quantity of one kind, which is known to be good. In Scotland, it is usual to stipulate that four pecks, or one bushel, shall be sown to the imperial acre, and to limit the kind to good perennial rye-grass. This is unnecessary; but is better than to allow the practice, which prevails in many parts of England, of sowing what are called hay-seeds, which are the produce of a mass of plants, most of them unworthy of cultivation.

(*k*) For other provisions, as to fences, see Form of a Lothian Lease—Forms of Leases, *post*.

(*l*) There is great difference of opinion among agriculturists as to the propriety of making the covenant against two successive white crops universal. I might cite many names of great authority to prove

part thereof, and shall summer fallow in each year, or cultivate with clover or artificial grasses, not seeded or mown twice, or with turnips or other green crops for fodder, at least one part thereof [*if a heavy clay, adapted to the growth of wheat and beans, then "one-third"—thus laying down a three-course system; if the soil be a light loam, adapted for turnips, then "one-half"—thus laying down a four-course system; or "three-fifths"—thus laying down a five-course system, leaving the tenant to the choice of his crops, so that he keeps his full proportion of green crops*] (m), and so that the whole shall in turn be so summer fallowed or cultivated with green crops: and shall dress every acre of teazles or potatoes with at least ten tons of good purchased manure, or an equivalent quantity of artificial manure.

*Short set of Culture Covenants, capable of adaptation to the Four, Five, or Six-field Shift, or to up-and-down Land.*

72.—To cultivate, manage, and keep, during the said term, the whole of the tillage lands of the said farm, after the best and most approved mode of husbandry, and in the following

that upon strong lands such a prohibition is objectionable, and a proviso against two grain crops of the same kind quite sufficient: there are however names of at least equal weight on the other side. Opinions are I believe unanimous, that upon light soils two successive straw crops should be always forbidden, and also that upon heavy lands the clause against successive grain crops of the same kind should never be omitted.

(m) Among the many culture covenants which are in use, and of which it has been thought necessary to produce precedents in this work, the above will probably be the only one having direct reference to the rotation of crops, which will be used by a great many of the best agriculturists. It is obtained from a form of agreement prepared by the Messrs. Sturge, of Bristol. In some observations with which these gentlemen have favoured me upon this subject,

they say, speaking of the West of England, "It is not usual in forms of agreement which have come under our notice, for the mode of cultivation, including the rotation of crops, to be specially laid down. This course too much fetters the tenant, and stands in the way of any improvement of system, while the prescribed cultivation may be far from being the best for the farm. We think the general clauses introduced in our agreements secure the interests of the landlord, while they leave free scope to the skill and enterprise of the tenant. The first point is to prevent over-cropping" (which is met by the clause in the text). "The second point is to secure the keeping a proper quantity of stock, and for this purpose we provide that the whole of the green crops shall be consumed upon the premises."

rotation of cropping yearly, that is to say :—Not to sow any land with two crops of white grain in succession, or with more than two crops of white grain of any kind without an intervening fallow or pulse crop, or grass ley, or clover crop; or which shall not be sown with red clover or grass seeds for pasture with the first crop, after the same shall have been fallowed; and so to cultivate the farm that there shall be in every year        acres of land in clover or grass ley (n) of the first year, and        acres in grass ley of the second or more years' growth (o), exclusive of the land which is marked in the

(n) According to the nature of the farm different rules prevail with respect to the proportion of the arable ground which shall be sown in grass. If the land is of that kind that the four-years' course, namely, fallow crop, or summer fallow, corn, grass, corn, may be adopted; then the proportion of the arable land which may be kept in grass is one fourth part. The terms of the stipulation may therefore be, "*not less than one fourth part of the arable land shall be always in sown grass:*" and it will be observed that in making the stipulation in these terms, a tenant is not absolutely bound to follow the four-years' course, but may have a larger proportion in grass if he thinks fit. The lease merely stipulates that he shall not have less; or, in other words, that he shall not follow a course more severe in this respect than the four-years' rotation; and this is an example of the manner in which a tenant may be laid under certain restraining conditions with respect to his general management, without being bound to follow a particular course.

(o) If the farm is suitable to the six-years' course, namely, summer fallow, or fallow crops, corn, grass, corn, pulse, corn, then it will be seen that one sixth part only of the farm is in sown grass. The words of the lease may in this case be, "*not less than one sixth part of the arable lands shall be always in sown grass.*" By the rule thus expressed the tenant may follow the four-years' course, if

he pleases: the lease merely providing that he shall not possess greater latitude, with respect to the proportion to be kept in grass, than the six-years' course allows.

But the land may be of the poorer kind, or it may be a more suitable management that the husbandry of live stock shall be combined with that of tillage, rather than that the farm shall be devoted chiefly or exclusively to tillage. In these cases, the land must remain for more than one year in grass; and the proportion of the farm that shall be yearly in that state depends upon the number of years for which it shall be depastured.

Let it be supposed that the farm is adapted to the five-years' course, namely, fallow crops, or summer fallow, corn, grass, grass, corn, then it will be seen that two-thirds are every year in sown grass, and that each division remains two years in grass, before being again ploughed. The lease provides, accordingly, that not less than two fifth parts of the arable land shall in any year be in sown grass, and that the land shall remain not less than two years in grass, before it is again taken up for tillage.

Again, let it be supposed that the land ought to remain three years in grass, so that the course becomes fallow crop, or summer fallow, corn, grass, grass, grass, corn. In this case, one-half of the arable land is yearly in sown grass, and each division remains three years in grass

annexed schedule as permanent grass [or, exclusive of the lands which are numbered , &c., in the tithe-apportionment map, and which lands, whatever may be their description in the apportionment referred to by the said map, are hereby declared to be permanent grass ](p).

*Culture Stipulations adapted to Michaelmas Entry and a Five-field Course.*

And the parties further agree, that reservations, covenants and provisoes to the following effect, shall be introduced into the said intended lease, that is to say:—

73. Not less than two fifth parts of the arable land shall be always in sown grass; and whatever part of the arable lands shall be ploughed or in tillage in any year, not less than one third part so ploughed or in tillage shall be in summer fallow, or fallow crops well manured, and duly worked in the proper season; and no two crops of white corn, nor any two crops of the same kind shall follow one another in immediate succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover and two pecks of good rye-grass seeds to the standard acre, and this along with the first crops; and no land so sown shall be mown for hay more than once before it is again ploughed, and all land in grass shall remain two years in grass before it shall be again taken up for tillage; and in the last year of this lease the landlord reserves power to sow grass seeds on such part of the land as had been in summer fallow or fallow crops in the preceding year, the

before it is ploughed. The provision of the lease accordingly is, that not less than one-half of the arable land shall be in any year in sown grass, and that the land shall remain not less than three years in grass before it is again taken up for tillage.

Thus, according to the nature of the farm and the mode of management to which it is suited, should be fixed the smallest poportion of the arable land which shall be each year in grass, and the shortest

period for which it shall remain in that state.

The tenant may have a larger quantity of grass, or he may keep it longer in pasture than is stipulated; but it is the province of the stipulation to fix the minimum.

(p) The description of the fields as arable, meadow, or pasture, which will be found in the tithe apportionments, however correct at the time of the commutation, will of course be in short lapse of time quite erroneous.

tenant harrowing or rolling the land so sown in a proper manner, free of charge [*or*, at a price to be fixed by referees chosen as aforesaid]; and the tenant shall not depasture or otherwise injure the land so sown, after his last crop of corn has been reaped. All the straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land which shall be in summer fallow or fallow crops. But in the last year of the tenancy all the dung made from the preceding crops, not applied to the land at the term of removal, shall be left to the landlord free of charge [*or*, at a price to be determined by referees chosen as aforesaid]; and all the hay, the produce of the farm, and all the turnips and other fallow crops which shall be upon the ground at the term of removal, shall be transferred to the landlord or incoming tenant at a price to be fixed by referees chosen as aforesaid. And the tenant shall thresh the corn crops of the last year on the premises, and deliver the straw thereof regularly to the incoming tenant free of charge; for which purpose he shall have the use of the barns, barn-yard, and granary, with stable-room and straw for pairs of horses, and the use of two cottages for his servants, all free of charge, and this until the 1st day of May, after his last crop has been reaped.

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When the straw of the corn crops, as well as the corn itself, belongs to the tenant, or when summer fallow is necessary, provision may be made for transferring the crop and working the fallows as in the last precedent.

This stipulation will apply to all similar courses in which the land remains more than two years in grass: the proportion of the arable land which shall be in grass and the period for which it will remain in that state being specified. Thus, if the land requires to be laid three years to grass, the provision is, "Not less than one-half of the arable land shall be always in sown grass; and whatever part of the arable land shall be ploughed or in tillage in any year, not less than one third part of the land so ploughed or in tillage shall be in summer fallow, turnips, or other fallow crops, well manured

and duly worked in the proper season; and no two crops of white corn, nor any two crops of the same kind, shall follow one another in immediate succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover, and two pecks of good rye-grass seeds, to the standard acre, and this along with the first crop after summer fallow or fallow crops; and no land so sown shall be mown for hay more than once before it is again ploughed; and all land in grass shall remain three years in grass before it shall be again taken up for tillage" [*continue as before*].

*Culture Stipulations adapted to a Michaelmas Entry  
and Four-field Course.*

74. And the parties further agree, that reservations, covenants, and provisoes to the following effect shall be introduced into the said intended lease; that is to say, not less than one fourth part of the arable land shall be always in sown grass, and whatever part of the arable lands shall be ploughed, or in tillage in any year, no less than one third part of the land so ploughed, or in tillage, shall be in summer fallow or fallow crops, well manured and duly worked in the proper season; and no two crops of white corn, nor any two crops of the same kind, shall follow one another in immediate succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover, and two pecks of good rye-grass seeds, to the standard acre; and this along with the first crop, after summer fallow or fallow crops: and no land so sown shall be mown for hay more than once before it is again ploughed; and in the last year of the tenancy the landlord reserves power to sow grass seeds on such part of the land as had been in summer fallow, or fallow crops in the preceding year; the tenant harrowing or rolling the land so sown in a proper manner, free from charge, [*or, as the case may be, at a price to be fixed by referees chosen as aforesaid*]; and the tenant shall not depasture, or otherwise injure the land so sown, after his last crop of corn has been reaped. All the straw produced upon the farm, and all the turnips and other fallow crops, and all the clover grasses and other forage plants, whether green

or made into hay, shall be consumed upon the farm, and all the dung arising therefrom shall be applied to the land which shall be in summer fallow or fallow crops. But, in the last year of the tenancy, all the dung made from the preceding crops, not applied to the land at the term of removal, shall be left to the landlord free from charge, [*or, at a price to be determined by referees chosen as aforesaid*] ; and all the hay, the produce of the farm, and all the turnips and other fallow crops, which shall be upon the ground at the term of removal, shall be transferred to the landlord or incoming tenant, at a price to be fixed by referees chosen as aforesaid. And the tenant shall thresh the corn crops of the last year on the premises; and deliver the straw thereof regularly to the incoming tenant free of charge, for which purposes he shall have the use of the barns, barn-yard, and granary, with stable room and straw for two pairs of horses, and the use of two cottages for his servants, all free of charge, and this until the first day of May, after his last crop has been reaped (g).

*But when the straw of the crops, as well as the corn itself, is the property of the tenant, the whole crop including the straw must be purchased by the landlord or incoming tenant; thus:* "All the corn crops of the last year, with the straw thereof, shall be transferred to the landlord or incoming tenant, at a price to be determined by referees chosen as aforesaid."

*If summer fallow necessarily enters into the course, provision may be made for working it thus:* "In the last year of the tenancy, there shall be on the farm a quantity of land, in summer fallow, extending to                  acres, which the tenant shall cultivate in a husbandlike manner, giving it not less than five ploughings, and manuring it with farm-yard dung at the rate of ten tons per acre, and preparing it for wheat in due season; for the working of which fallow land, and [for the dung laid thereon, and for] spreading the dung thereon, and for other necessary labours, in so far as the works shall have been executed in a husbandlike manner, the tenant shall receive payment according to the award of referees chosen as aforesaid; and the landlord reserves power to sow wheat on the said fallow land, which the tenant, if required, shall harrow in

a suitable manner, and for which harrowing he shall receive payment according to the award of referees chosen as aforesaid."

*Culture Stipulations adapted to Michaelmas Entry and Six-field Course—1st, Fallow or Fallow Crop; 2nd, Corn; 3rd, Grass; 4th, Corn; 5th, Pulse; 6th, Corn.*

75. [*Commence as in two former precedents.*] Not less than one sixth part of the arable land shall be always in sown grass; and whatever part of the arable lands shall be ploughed or in tillage in any year, not less than two fifth parts of the land so ploughed or in tillage shall be in summer fallow or fallow crops, or pulse crops, whereof not less than one half shall be in summer fallow or fallow crops; and all the summer fallow, fallow crops, and pulse crops, shall be well manured and duly worked in the proper season; and no two crops of white corn, nor any two crops of the same kind, shall follow one another in immediate succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover, and two pecks of good rye-grass seeds, to the standard acre, and this along with the first crop after summer fallow, fallow crop, or pulse crop; and no land so sown shall be mown for hay more than once before it is again ploughed; and in the last year of this lease the landlord reserves power to sow grass seeds on such part of the land as had been in summer fallow, fallow crops, or pulse crops in the preceding year, the tenant harrowing or rolling the land so sown in a proper manner, free of charge [*or, at a price to be fixed by referees chosen as aforesaid*]; and the tenant shall not depasture or otherwise injure the land so sown after his last crop of corn has been reaped. All the straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land, which shall be in summer fallow, fallow crops, or pulse crops; but, in the last year of this lease, all the dung made from the preceding crops, not applied to the land at the term of removal, shall be left to the landlord free of charge [*or, at a price to be determined by referees chosen as aforesaid*]; and all the hay, the produce of the farm, and all the turnips and other fallow



crops, which shall be on the farm at the term of removal (r), shall be transferred to the landlord or incoming tenant, at a price to be fixed by referees chosen as aforesaid. \* And the tenant shall thresh the corn crops of the last year on the premises, and deliver the straw thereof regularly to the incoming tenant free of charge, for which purposes he shall have the use of the barns, barn-yard, and granary, with stable-room and straw for two pairs of horses, and the use of two cottages for his servants, all free of charge, and this until the 1st day of May after his last crop has been reaped.

*If the straw of the white corn and pulse crops is the property of the tenant, the crops must be purchased: in that case omit all words after \*, and add, "All the white corn and pulse crops of the last year, with the straw thereof, shall be transferred to the landlord or incoming tenant, at a price to be determined by referees as aforesaid." In the six-field course there is usually a large quantity of fallow, which should be provided for as in the precedent, No. 74.*

*Culture Stipulations adapted to Lady-day (s) Tenancies  
and Four-field Course.*

76. [Commence as before.] Not less than one fourth part of the arable land shall be always in sown grass; and whatever part of the arable lands shall be ploughed or in tillage in any year, not less than one third part of the land so ploughed or in

(r) See note to the next precedent.

(s) When the entry is in spring, as at Lady-day or Whit-sunday, the waygoing tenant, it has been seen, removes from the houses, from all the land which is in grass, and from that division of the farm which in the regular course of management is to be in summer fallow and fallow crops in the ensuing season, and he removes from the land in corn crop in autumn, when this crop has been carried from the fields. At the period of entry, accordingly, the incoming tenant takes possession of the farm buildings; of the land in grass, which he stocks or reserves for mowing; of the division of the land which is to be in fallow or fallow crops, which

he proceeds to work; and of the lands under corn crop after the fields are cleared. The great advantage of this period of entry is that the working of the summer fallow devolves upon the entering tenant, who has the chief interest in performing the work well, and that he takes possession in sufficient time to work the land which is to bear fallow crops, and which he has a much greater interest in tilling in a suitable manner than the waygoing tenant can have in the last year of the lease: this period of entry is more common in England than in Scotland. Wherever it is established, or can be introduced, it will be found to be the best suited for every farm on which the summer fallow is necessary.

tillage shall be in summer fallow or fallow crops, well manured and duly worked in the proper season; and no two crops of white corn, nor any two crops of the same kind, shall follow one another in immediate succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover, and two pecks of good rye-grass seeds, to the standard acre, and this along with the first crop after summer fallow or fallow crops, and no land so sown shall be mown for hay more than once before it is again ploughed; and in the last year of this lease the landlord reserves power to sow grass seeds on such part of the lands as had been in summer fallow or fallow crops in the preceding year, the tenant harrowing or rolling the land so sown in a proper manner, free of charge [or, at a price to be fixed by referees chosen as aforesaid]. All the straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm (t), and all the dung arising therefrom shall be applied to the land, which shall be in summer fallow or fallow crops; but in the last year of the tenancy, all the dung made from the preceding crops not already applied to the land shall be left to the landlord free of charge [or, at a price to be determined by referees chosen as aforesaid]; and one-third part of the land which shall be ploughed or in tillage in the last year shall be left in fallow at the term of removal, free of charge, which land the tenant shall have ploughed once before winter, for which ploughing he shall receive payment according to the award of referees chosen as aforesaid; and, further, the landlord reserves power to enter upon and cultivate the said fallow land at any time after the 1st of March in the last year. And the tenant shall thresh the corn crops of the last year upon the premises, and deliver the straw thereof regularly to the incoming tenant free of charge, for which purposes he shall have the use of the barns, barnyard, and granary, with stable

(t) In Michaelmas leavings the fallow crops of the year, as the turnips, may be supposed to be still upon the farm, and a provision accordingly was made (see foregoing precedents) for their being transferred to the incoming tenant

at a price. Under the spring entry, however, no provision of this kind is necessary, because the waygoing tenant has had the opportunity of consuming or disposing of these parts of his produce in the manner allowed by the agreement.

room and straw for                pairs of horses, and the use of two cottages for his servants, all free of charge, and this until the 1st day of May after his last crop has been reaped. [*If straw may be removed from the farm, then the crop must be purchased, as in the foregoing precedents. Where summer fallow enters into the course, no provision, as in the case of the autumnal entry, is necessary for working it, since it is delivered over to the entering tenant at the term of removal, once ploughed as above provided for, and the incomer does the rest of the work.*]

*Culture Stipulations adapted to Lady-day Tenancies and a Five-field Course—Fallow or Turnips—Corn—Grass two Years—Corn.*

77. [*Commence as before.*] Not less than two fifth parts of the arable land shall be always in sown grass, and whatever part of the arable lands shall be ploughed or in tillage in any year, not less than one third part of the land so ploughed or in tillage shall be in summer fallow, or fallow crops, well manured and duly worked, in the proper season: and no two crops of white corn, nor any two crops of the same kind, shall follow one another in immediate succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover, and two pecks of good rye-grass seeds, to the standard acre, and this along with the first crop after summer fallow or fallow crops; and no land so sown shall be mown for hay more than once before it is again ploughed; and all land in grass shall remain two years in grass before it is again ploughed; and in the last year of this lease the landlord reserves power to sow grass seeds on such part of the land as had been in summer fallow or fallow crops in the preceding year, the tenant harrowing or rolling the land so sown in a proper manner, free of charge [*or, at a price to be fixed by referees chosen as aforesaid*]; and the tenant shall not depasture or otherwise injure the land so sown after his last crop of corn has been reaped. All the straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed

upon the farm; and all the dung arising therefrom shall be applied to the land which shall be in summer fallow or fallow crops. But, in the last year of this lease, all the dung made from the preceding crops, not already applied to the land in terms of this lease, shall be left to the landlord free of charge [or, at a price to be determined by referees chosen as aforesaid]; and one-third part of the land which shall be ploughed or in tillage in the last year shall be left in fallow at the term of removal, free of charge, which land the tenant shall have ploughed once before winter, for which ploughing he shall receive payment according to the award of referees chosen as aforesaid; and further the landlord reserves power to enter to, and cultivate, the said fallow land at any time after the first of March in the last year. And the tenant shall thresh the corn crop of the last year upon the premises, and deliver the straw thereof regularly to the incoming tenant free of charge; for which purposes he shall have the use of the barns, barn-yard, and granary, with stable-room and straw for pairs of horses, and the use of two cottages for his servants, all free of charge, and this until the first day of May after his last crop has been reaped. *[For any course of crops in which the land is to remain for more than one year in grass the conditions of management are the same, except with respect to the proportion of the arable land which shall be in grass, and the period for which it shall remain in that state.]*

*Culture Stipulations adapted to Lady-day Tenancies and a Six-field Course—Fallow or Fallow Crop—Corn—Grass—Corn—Pulse—Corn.*

78. *[Commence as before.]* Not less than one sixth part of the arable land shall always be in sown grass, and whatever part of the arable lands shall be ploughed or in tillage in any year, not less than two fifth parts of the land so ploughed or in tillage shall be in summer fallow or fallow crops, or pulse crops, whereof not less than one half shall be in summer fallow or fallow crops; and all the summer fallow, fallow crops, and pulse crops, shall be well manured and duly worked in the proper season; and no two crops of white corn nor any two crops of the same kind shall follow one another in immediate

succession; and all the land sown with grass seeds shall be sown with at least ten pounds of clover, of which not less than five pounds shall be white clover, and two pecks of good rye-grass seeds, to the standard acre, and this along with the first crop after summer fallow, fallow crops, or pulse crops; and no land so sown shall be mown for hay more than once before it is again ploughed; and in the last year of the tenancy the landlord reserves power to sow grass seeds on such part of the land as had been in summer fallow, fallow crops, or pulse crops, in the preceding year, the tenant harrowing or rolling the land sown in a proper manner free of charge [*or, at a price to be fixed by referees chosen as aforesaid*]. All straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land which shall be in summer fallow, fallow crops, or pulse crops. But, in the last year of this lease, all the dung made upon the preceding crops, not already applied to the land in terms of this lease, shall be left to the landlord free of charge [*or, at a price to be determined by referees chosen as aforesaid*]. And one-fifth part of the land which shall be ploughed, or in tillage in the last year, shall be left in fallow at the term of removal, free of charge, which land the tenant shall have ploughed once before winter, for which ploughing he shall receive payment according to the award of referees chosen as aforesaid; and, further, the landlord reserves power to enter upon and cultivate the said fallow land at any time after the first of March in the last year. And the tenant shall thresh the corn crops of the last year on the premises, and deliver the straw thereof regularly to the incoming tenant free of charge; for which purposes he shall have the use of the barns, barn-yard, and granary, with stable room and straw for        pairs of horses, and the use of two cottages for his servants, all free of charge, and this until the first day of May after his last crop has been reaped. [*Or, if the straw is the property of the tenant, "All the white corn and pulse crops of the last year, with the straw thereof, shall be transferred to the landlord or incoming tenant, at a price to be determined by referees chosen as aforesaid."*]

*Culture Stipulations adapted to the South of Derbyshire.*

79.—Not to break up any meadow or pasture land which shall have been continued as such during more than four summers.

Not to have more than one-third of the total quantity of the farm in tillage at one time, without leave in writing of the landlord or his agent.

Not to take more than two white crops successively (u).

*Culture Stipulations adapted to Somersetshire.*

80. To pay rent at audit.

Personally to inhabit the buildings and occupy the lands, and not to desert or underlet the same, or any part thereof.

Nor beat out, cut out, or tread out the wet lands with horses or cattle after notice to quit given or received.

Not to sow any of the fields numbered —, —, and —, on the tithe-apportionment map with wheat more than once in three years, nor to sow more than two white-straw crops in succession; but once in three years to sow such land with clover or vetches, or to leave it in summer fallow.

As to the fields numbered — and — on the tithe-commutation map, to sow one fourth part with wheat; one fourth part with turnips, vetches, or other succulent crop; one fourth part with barley or oats; and one fourth part with clover.

Not to fold any of the sheep fed on the farm on any other lands.

To keep the orchards and fruit trees in good order, and dig round, clean round, and prune the trees, and to plant fresh trees when required, the landlord supplying the trees.

*Culture Stipulations adapted to Norfolk Customs.*

81. To farm the arable land on the four-course shift; (or),

82. To farm the arable lands as set out in schedule on the

(u) In many parts of the country this is the only restriction as to rotation of crops which is inserted in the agreements; and, under it, where the land is of such capacity that the crops may be varied, the crop-

ping may be continued for many years without repetition. I take these provisions from a form settled by Mr. John Bromley, of Derby.

four-course shift, taking one eighth part turnips, and one eighth beans, peas, or tares, in lieu of layer.

83. Proviso that tenant may sow one field of barley stubble yearly, with peas, beans, or tares, instead of laying down.

*Culture Stipulations adapted to Glamorganshire.*

84. That the tenant shall at all times, during the said term, bring and expend in a husbandlike manner, on every acre of land which shall be sown or planted, at least twenty and not exceeding thirty crannocks of good well-burnt lime, or ten large cart-loads of good rotten dung, and so in proportion for any greater or less quantity than an acre. And after every such dressing will take only one crop of corn or grain, before he shall so dress the same again. And if the last of such crops be barley or oats, the tenant with such barley or oats shall always sow a sufficient quantity of good merchantable clover seeds, or other grass seeds, according to the best method of husbandry generally practised in the Vale of Glamorgan.

*Culture Stipulations adapted to South Wales.*

[I have been favoured by Mr. J. Harvey, of Haverfordwest, with the following set of culture stipulations, and am assured that it is a favourable specimen of the agreements in use in Pembrokeshire, Cardiganshire, and Carmarthenshire, and quite as stringent as the habits of the farmers will allow.]

85. Not to have under tillage in any one year more than acres of the lands hereby agreed to be demised. And also not to take from off the same lands *more than four corn crops in succession* without the intervention of a fallow, or green or pulse crop. And also to sow all outgoing lands with good and sufficient clover and grass seeds. And also not to sell or remove from off the premises any hay, straw, corn in straw, or manure grown or produced thereon, except the produce of the last year; and then only in case the landlord shall not by the first day of September next preceding the determination of tenancy, declare by a notice in writing given to the tenant his desire to purchase the same. And if the landlord shall so declare his desire the said [*tenant*] will thereupon sell to him

such hay, straw, corn in straw, and manure, at a valuation to be ascertained by two indifferent persons, one to be chosen by each party, or by their umpire in the usual way. And also to bring to and expend upon the said premises, in every year of the tenancy, at least forty cart-loads of well-burnt lime. And also to cultivate and manage the said premises in a husband-like manner. And it is further agreed, that the said [*tenant*] shall be paid or allowed by the landlord the cost price at the kilns of all lime, and half the cost price of any other purchased manures which shall have been spread or used on any part of the said premises, from which one crop only shall have been reaped or gathered at the end of the tenancy.

*Culture Stipulations adapted to Staffordshire.*

86. To manage all the arable land of the farm upon either a five-course or a six-course shift (*x*).

87. *Five-course Shift*.—Not to plant or sow with corn, grain, or pulse in any one year more than two-fifths of so much of the arable land as shall be managed on a five-course shift; nor plant or sow corn, grain, or pulse in succession, and without the intervention of a good summer or turnip fallow well cleaned and manured, and to sow with clover and suitable grass seeds upon the crop of grain next succeeding the turnips or fallow (*y*).

88. *Six-course Shift*.—Not to plant or sow with corn, grain, or pulse, in any one year more than one-half of so much of the arable land as shall be managed on a six-course shift; nor to sow corn, grain, or pulse on such lands, more than two years in succession, and without the intervention of a good summer or turnip fallow, and to sow with clover, &c. (as before) (*z*).

(*x*) Taken from a form of culture covenants, prepared by Mr. Thomas Turner, of Abbot's Bromley.

(*y*) This stipulation admits of, 1st, wheat on leys; 2nd, turnips; 3rd, barley, seeded; 4th, clover, mowed; 5th, leys: or, 1st, oats or beans, on leys; 2nd, summer fallow; 3rd, wheat, seeded; 4th, clover, mowed; 5th, leys.

(*z*) This stipulation admits of, 1st, oats, peas, or beans, on leys; 2nd, summer fallow; 3rd, wheat, seeded; 4th, clover, mowed; 5th, leys, grazed; 6th, leys, grazed: or, 1st, oats on leys; 2nd, beans or peas; 3rd, fallow; 4th, wheat, seeded; 5th, clover, mowed; 6th, leys, grazed.



*Six-years' Course, Fallow or Fallow Crops, Corn, Grass, Corn, Pulse, Corn.*

89. That whatever part of the arable land shall be ploughed or in tillage in any one year, not less than two fifth parts of the land, so ploughed or in tillage, shall be in summer fallow and fallow crops; and all the summer fallow, fallow crops, and pulse crops shall be well manured and duly worked in proper season, and that the fallow crops shall be horse and hand hoed (a).

*Manure.*

90. *To consume all Produce.*—And that all the straw produced upon the farm, and all the turnips and the fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land.

[If the farm is entirely arable, the manure under a proper system of rotations should be applied to the land in summer fallow, or fallow and pulse crops, in such case therefore to the foregoing stipulations may be added, "which shall be in summer fallow, fallow crops or pulse crops"].

91. *Exceptions—Potatoes, Hay.*—And that all the straw produced upon the farm, and all the turnips and other fallow crops, with the exception of potatoes, and all the clovers, grasses, and other forage plants not made into hay, shall be consumed upon the farm; and all the manure arising therefrom shall be applied to the land [or "to the land in summer fallow or fallow or pulse crops" as above].

92. *To bring back Manure.*—And that all the straw produced upon the farm, and all the turnips and other fallow crops, and all the clovers, grasses, and other forage plants, whether green or made into hay shall be consumed upon the farm; and all the dung arising therefrom shall be applied to the land: provided nevertheless, that if the tenant shall at any time give three days' notice to the landlord or his agent of his intention to sell or lead off any such produce as aforesaid,

(a) Fallow crops are always best worked when they are sown in rows, and horse and hand hoed.

and shall specify the quantity intended to be sold or led off, and the acreage from which the same was produced, it shall be lawful for the tenant to sell or lead off such produce, upon his bringing upon the farm, within three days after such sale or leading off, extraneous manure to be expended upon the farm in the regular course of husbandry to the extent following, that is to say:—For every acre of hay or straw sold, ten tons of dung, [*or*, fifteen acres of street refuse]; For every acre of potatoes, turnips, or other fallow crops, or of green forage plants, fifteen tons of dung, [*or*, twenty-three tons of street refuse] (*b*).

### *Michaelmas Tenancies.*

93. (*c*) And that all the straw produced upon the farm, and all the turnips and other fallow crops, and all the clover,

(*b*) See other form in Form of Lease, No. 2.

(*c*) With respect to the corn crops, the grain of these in all cases belongs to the waygoing tenant; but the straw may either belong to him, or be an appendage of the farm. In the former case, he will be entitled to dispose of both together; but as the necessary forage of the farm would thus be removed, the lease should always provide that the corn and straw of the last year shall be transferred to the landlord or incoming tenant, at a price to be fixed by referees, whose duty it will be to determine the value on fair principles, and the periods of payment of the price, making the necessary deductions for threshing, carrying to market, superintendence, and other charges. When the straw of the last crop is an appendage of the farm, and the grain alone belongs to the awaygoing tenant, it becomes necessary, either that the latter have the means afforded him of threshing and preparing the corn for the market, upon the premises, or else that the landlord or incoming tenant purchase the crop, in which case the referees, who determine its price,

deduct the value of the straw which is an appendage of the farm. This is always better than to allow the outgoing tenant to thresh it himself upon the farm; for then he is released from all connection with the premises at the regular term of removal, is removed from all future collision with the new possessor, and is not compelled to retain his labourers and working cattle for the purpose of threshing his crop and carrying it to market. Doubtless, the incoming tenant may prefer that he be not compelled to take the crop of his predecessor at a valuation, because he might make better terms with him, or else oblige him to perform his stipulation of threshing the crop upon the farm; but this ought not be made an argument against establishing an equitable system of entry and removal upon an estate. The now incoming tenant will, at the termination of his lease, be a waygoing tenant, and then it will be of great importance to him that his successor be bound to relieve him of his crop at the end of his term.—Low on Landed Property, p. 83.

grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm ; and all the dung arising therefrom shall be applied to the land which shall be in summer fallow, or in fallow and pulse crops ; but in the last year of this lease [*or* “tenancy”], all the dung made from the preceding crops, not applied to the land at the term of removal, shall be left to the landlord, free of charge [*or, as the case may be, “at a price to be determined by referees”*] ; and all the hay, the produce of the farm, and all the turnips and other fallow crops, which shall be on the farm at the term of removal, shall be transferred to the landlord or incoming tenant, at a price to be fixed by referees chosen as aforesaid ; and the tenant shall thresh the corn crops of the last year upon the premises, and deliver the straw thereof regularly to the incoming tenant, free of charge, for which purposes he shall have the use of the barns, barn-yard, and granary, and stable room, and straw for pairs of horses, and the use of cottages for his servants, all free of charge, and this until the first day of May after his last crop has been reaped.

94. To consume on the farm all hay, [*or, bring back two waggon-loads of good purchased manure for every waggon-load of hay sold off, and produce vouchers when called for,*] and also all straw, green crops, fodder, or manure grown or made thereon.

95. Not to sell tares, lucern, or clover, but to consume the same on the premises.

96. *Penalty Clause.*—To pay five pounds per acre, in addition to the abovenamed rent or rents, for every acre cultivated contrary to the spirit and meaning of this agreement, without having previously obtained, and being able to produce, permission in writing from the said landlord or his agent, so to vary the mode of cultivation. And also to pay in like manner five pounds for every waggon-load of hay, or other agricultural produce, excepting grain alone, which is removed from the premises, unless permission in writing shall, in like manner, have been obtained, and be produced if called for.

*Stipulations against injurious Products.*

[This covenant is common in the peaty fen lands of Cambridgeshire and Lincolnshire, where rape is grown instead of turnips.]

97. That only two crops of white corn, or only one crop of white corn and one crop of cole seed shall succeed each other in any part of the farm, and then only upon its being preceded by a crop of cole seed, which shall have been fed off by sheep.

98. Not to take more than        acres of grass seeds, or acres of turnip seed.

99. Not to have in any year, at any one time, more than twenty acres of cole seed.

100. Not to sow any hemp, flax, or rape seed, beyond the quantity of half an acre.

*Miscellaneous.*

101. *Schedule of Cropping.*—To leave with the landlord, at Christmas of every year, a schedule of the cropping of every field at the preceding harvest.

102. *Draining.*—To do        rods of under-draining yearly, with an option to the landlord to point out where such under-draining shall be done; the cost of such        rods of under-draining to be considered an additional rent reserved, and not to be allowed for as permanent improvements, under any circumstances, on quitting.

103. *Marling.*—To clay or marl [*or, to lime, chalk, &c. &c., as the quality of the land may require*]        acres of the arable lands, and        acres of the grass lands yearly, with an option to the landlord to point out the land on which the same shall be done; and the cost to be considered as an additional rent reserved, and not to be allowed for as permanent improvements, under any circumstances, on quitting.

104. To keep a dog for the landlord, gratis.

105. To deliver to landlord        waggon-loads of wheat straw, yearly.

106. To find a waggon with four horses and a driver, days in each year, for the use of the landlord, gratis.

107. To permit landlord to exchange any lands, part of the farm, under the authority of the Inclosure Commissioners.

108. To permit landlord to take into his own possession acres, allowing to tenant the value thereof by valuation.

#### OUTGOING AND INCOMING STIPULATIONS.

*Stipulations regulating Outgoing and Incoming, adapted to a Lady-day Tenancy, where Growing Crops are taken at a Valuation.*

109. And it is hereby further agreed, that the said lease shall contain covenants that the tenant shall enter upon the manure upon the said farm without purchase, and that he shall leave all the manure which shall have been produced by the last crop previous to his quitting the said farm, without compensation, for the use of the said landlord or his succeeding tenant. And that the tenant shall purchase by valuation the crops now growing or intended to be sown on the green or summer fallowed lands, and the clover or grass seeds that have been sown the last spring. And on his quitting the said farm, shall sell in like manner all crops growing on clean summer or green fallows, not exceeding                    acres of land, that shall have been duly manured with not less than eight tons of good rotten manure, or three quarters of ground half-inch bones, or with four chaldrons of lime, per acre. Also that he shall be entitled to the value of the clover or grass seeds which shall have been sown the preceding spring, upon lands with the first crop after a fallow that shall have been made perfectly clean, and manured or limed in a good husbandlike manner, provided such young seeds shall not have been injured by the treading or eating of cattle of any description after Michaelmas-day preceding.

And the said tenant further agrees, to give up possession to the said landlord or his succeeding tenant, of all the lands in stubble or grass ley of clover intended to be sown with a spring crop, on the first day of February previous to his quitting the farm; and to allow him or them to sow clover or grass seeds upon any part or the whole of the offgoing crops above alluded to, and to harrow or otherwise cover in the seeds. From which said first day of February the said tenant shall furnish

to the succeeding tenant stable room and accommodation for horses, and for the provender necessary for their support, until the sixth day of April following.

*Adapted to the Customs of Glamorganshire.*

110. To permit the landlord, or the succeeding tenant, with his agents, servants, and workmen, with cattle, horses, and implements, at all times after the Michaelmas-day which shall precede the determination of the tenancy, to enter upon such parts of the lands as shall be then in course for wheat, for the purpose of preparing and sowing the same; and for and in respect of such privilege the tenant shall be allowed, in cases when the said wheat is to be sown in clover or other ley land, one quarter's rent and taxes, or when the said land has been properly and judiciously summer fallowed, twelve months' rent and taxes, with such fair and just expenses as may have been incurred by the said tenant, according to the decision of two practical farmers mutually chosen by the said landlord and tenant, or their umpire. And to permit the landlord or succeeding tenant, in like manner, after the first of December next preceding the determination of the tenancy, to enter upon and plough up the wheat stubbles, paying to the tenant one quarter's taxes only for the land so taken. And also, at the proper and seasonable time, to enter upon the premises, and sow clover, or other grass seeds, with the last spring crop; to take possession of the land so sown with clover or other grass seeds, on the day on which the barley or oats growing thereon shall be carried away for the purpose of stacking into the barn or elsewhere, on the said demised premises, the landlord or incoming tenant to pay one quarter's taxes for the land so taken. And the tenant also agrees, that he will give stable room for the horses of the said landlord, or the incoming tenant, that shall be employed in preparing and sowing the wheat, and that he will harrow in the clover and grass to be sown with the last spring crop, without making any charge or requiring any compensation, either for such stable room or for such harrowing as aforesaid.

*Adapted to Custom of Norfolk.*

The tenant shall covenant,

111. To leave one-eighth of the land in turnips, mucked with ten loads per acre, and to yield up on the 20th May in the last year, one eighth part in summer tilth, ploughed in the third earth.

112. To keep corn crops free from weeds in the last year.

113. To leave the turnips and hay grown in the last year, to be taken by the landlord by valuation at a consuming price.

114. To carefully preserve the manure made in the last year, and to leave the same (except that used for turnip land, not to exceed        loads per acre) in heaps for the use of the landlord, gratis [*or by valuation*].

115. Not to take in agist stock during the last three months of the last year.

116. To inbarn or stack on the premises all grain grown in the last year, and to thresh it out with flails before the 1st of June following; the landlord to pay for threshing, and to carry out the corn to any place within        miles of the premises, and to retain the chaff and straw, gratis.

117. To permit landlord or incoming tenant to sow grass seeds in last year on the land sown in summer corn.

*Stipulations as to away-going Crop.*

118. And it is further agreed between the parties that a covenant shall be inserted in the said intended lease, that all the corn crop of the last year, with the straw thereof, shall be transferred to the landlord or incoming tenant, at a price to be determined by referees (e).

(e) In Lady-day tenancies, if straw is an appendage of the farm, the waygoing tenant is bound to thresh his last crop on the premises, and must have the same facilities afforded him for doing so as in the case of entry at the fall; namely, the use of the barns, barn-

yard and granary, stable room and straw for his horses, and houses for the servants to be retained. The necessity, however, imposed upon a tenant who removes in spring of retaining horses and servants for the purpose of reaping and harvesting his corn crop in autumn, and

*Adapted to Lady-day Tenancies and to Customs of Shropshire.  
(Away-going Crop.)*

119. That the tenant, after notice to quit given or received, shall be allowed to take an awaygoing winter corn crop as follows:—The tenant not to sow more than                    acres of winter corn at the Michaelmas seedness, after receiving or giving notice to quit, and that to be upon lands in that year well summer fallowed and manured with twelve cubic yards of good rotten dung to the acre, or upon clover leys of the first and second year's growth, which shall have been seeded down with barley, after turnips grown upon well-cultivated and manured fallows. The tenant shall reap the same, and take and house two-thirds of the fallow, and one-half of the brush, (a tenth part thereof being first deducted in lieu of tithe,) in a barn belonging to the premises, with liberty to thresh out the same until the first day of May following, leaving the straw and chaff arising therefrom for the use of the landlord or succeeding tenant. But in case the lands claimed by the offgoing tenant to be fallow have not been properly cleaned and manured, as aforesaid, the same shall be considered as brush, and he shall be entitled to a moiety of the crop only, after deducting the tenth. And he shall in no case take his share of a greater quantity of winter corn than is hereby allowed to be sown, and the whole crop of any extra quantity shall belong to the oncoming tenant, the landlord fixing on the fields which shall be taken as the extra quantity.

[For provisions as to retaining barns, stabling, &c., see *ante*, Nos. 109 and 110, and forms of agreement.]

threshing and carrying it to market in winter, causes him great inconvenience and loss. The new tenant who is in possession, is the proper person to perform these works, and he ought never to object to do so if paid for his labour and superintendence. *In all cases, then, it is an equitable arrangement to provide that the incoming tenant shall take the last crop of corn at a valuation.* This value can only be determined by referees, whose duty it will be, in estimating the price to be paid, to deduct the harvest la-

bour, the expenses of threshing and carrying to market, of personal superintendence, and all other necessary charges. By this arrangement the waygoing tenant is enabled to quit the farm at the stipulated term in spring, and to dispose of his working cattle and stock of every kind. The incoming tenant may think it better not to burden himself with his predecessor's crop, but he must remember, that in the last year of his own lease he will receive the like advantage.



*Compensation for one Ploughing of Fallows—Lady-day Entry.*

[Under the spring entry the summer fallow and fallow crops are to be worked by the incoming tenant ; but, under proper management, all this land should receive one ploughing previous to winter. This should be done by the outgoing tenant, whose cattle are then on the farm.]

120. One fifth part of the land [*or whatever the proportion may be*], which shall be ploughed or in tillage in the last year, shall be left in fallow at the term of removal, free of charge, which land the tenant shall have ploughed once before winter, for which ploughing he shall receive payment according to the award of referees, chosen as aforesaid ; and further, the landlord reserves power to enter to and cultivate the said fallow land at any time after the first of March in the last year of the tenancy.

OUTGOING ALLOWANCES.

*Adapted to Cheshire.*

[One half of Cheshire is a cold clay, the other half is sandy loam and peat, incumbent upon red sandstone and upon marl. The application of bone dust to the cold clay land, after draining, at the rate of one ton per statute acre, and at an expense of from 4*l.* to 8*l.*, has been estimated to increase by fifty per cent. the productive quality of old pasture land, and to last for four or five mowings upon meadow land. On the light lands marling lasts from seven to ten years.—See *White's Evidence before Mr. Pusey's Committee.*]

121. And that in case the tenant shall, before notice to quit given, and after notice given to the landlord, and no objection made by him or his agent, manure any of the lands with bone dust to the extent of one ton per statute acre, he shall be allowed (if his tenancy should cease before the periods herein-after specified), in respect of the necessary cost thereof, as follows :—

For unboiled bones spread on meadow land, at the rate of one sixth part the cost for every mowing less than six since the application of the manure.

For boiled bones spread on meadow land, at the rate of one fourth part the cost for every mowing less than four since the application of the manure.

For unboiled bones on arable land, one fourth part the cost for every year less than four, and for boiled bones one third part the cost for every year less than three years since the application of the manure.

For boiled bones spread on pasture land, one eighth part the cost for every year less than eight, and for unboiled one tenth part for every year less than ten since the application of the manure.

*Taken from a Lancashire Agreement.*

122. That the landlord shall allow to the tenant at the determination of his tenancy, for such improvements made upon the farm after the commencement of his tenancy, and within the stated periods before quitting as are contained in the following list; that is to say, so much of the amount of such expense as shall be in the given proportion in each case to such a number of years as the tenant shall fall short in the occupancy of the farm after incurring such expense, *it being expressly stipulated that the tenant is to give an account each year in writing, on or before the 1st of April, of such outlay as he proposes to make, in order to obtain the sanction of the owner or his agent, to the proposed expense, such sanction being necessary in order to claim or be entitled to any allowance from him, and shall also render an account of such disbursements within each year; such account to be examined and signed by the agent, and to serve as a voucher for the sums to be received by the said tenant; and that non-payment of rent (if the same shall have been demanded and have afterwards remained unpaid for the space of six months), or non-fulfilment of covenants, shall forfeit any claim or right to such allowance for improvements.*

The proportion of the outgoing allowances for unexhausted manures to be regulated as follows:—

For bones used on the land, the allowance to extend to three years; half the cost price to be allowed after one crop, one-third after two crops, and one-fourth after three crops.

For guano used on the land, the allowance to extend to two years; one-third of the cost price to be allowed after one crop, and one-sixth after two crops.

For rape dust used on the land, the allowance to extend to one year; one-third of the cost price to be allowed after one crop.

For linseed cake used for feeding cattle and sheep, one-third of the cost price to be allowed for that which has been used since the 1st of October then last, and one-sixth of that used during the preceding twelve months. But no allowance to be made for cake given to horses.

*Where Way-going Wheat Crop taken.*

123.—(1.) The tenant to be allowed, in consideration of the foul and exhausted condition of the farm, fifty tons of lime per year, in the first two years of his tenancy.

(2.) The tenant to be allowed for one-half of the value (at the kiln) of all lime brought on the farm in the last year but one of his tenancy, and one-third of all lime expended in the last year of his tenancy.

(3.) To be allowed for all bones brought on the farm in the last two years of his tenancy in the same proportion as lime.

(4.) To be allowed half the value of all guano and other artificial manure expended on the farm in the last year of his tenancy.

(5.) To be allowed for all clover and grass seeds sown in the year preceding the expiration of his tenancy.

(6.) The offgoing tenant to be entitled to *two-thirds* of the value of all *fallow* wheat growing on the farm, and to *one-half* of all brush or single furrowed wheat, provided that the acreage of such wheat shall not exceed *one-fifth* of the arable land; but such crop shall at the option of the landlord be sold when ripe to him or his incoming tenant, at the valuation of two indifferent persons, or an umpire.

(7.) The offgoing tenant to be entitled to possession of the straw-yard and part of the sheds and cowhouses, and to a boosey pasture (No. 7, in the map annexed), until the 12th of May.

clover seed, or hay (or other) seeds, sown on any land with a *second* crop of corn after fallow ; nor shall any land so laid down into grass be taken as grass, but as tillage land on quitting.

(8.) For land pared and burnt, the summer previous to quitting, two-thirds of the year's rent and taxes, the cost price of paring and burning and spreading of the ashes, if sown with wheat, for the ploughing and harrowing, and seeds, wheat and sowing ; if sown with turnips, and eat on the land, all the above charges, but no allowance whatever to be made for land pared and burnt, sown with turnips and the crop drawn, nor in *any case whatever, without permission* being first obtained for the purpose.

(9.) For wheat sown upon clover ley, grass ley, pea stubble, or any other land, in a regular course of husbandry, the price of the seed and sowing, and for the ploughing and harrowing the same, and for bones, and manure or lime, on the principles before stated respecting them, but no charge to be made for clover ley (or pea stubble), whether mown or pastured the preceding year, and all such land to be considered as tillage land ; but the grass land ploughed up and sown with wheat at the time of quitting to be taken as grass land.

(10.) As there is an extra quantity of land allowed to be in tillage for making proper summer and turnip fallows, no charge to be allowed for Michaelmas, spring, or potatoe fallows, nor for any purchased manure, bones, or lime applied to them.

(11.) No allowance whatever to be made for purchased manure, bones, or lime, brought upon the premises after notice to quit given by either landlord or tenant the Michaelmas before quitting, except brought on at the request of the landlord, or by permission from him for that purpose.

(12.) No allowance whatever to be made for any fences laying, or ditches cleaning, draining, or walling, they being agreed to be kept in a regular good state of husbandry.

(13.) No allowance to be made or charge by any valuers employed, or their umpire, for any lime purchased, manure, or bones, except proper and authentic vouchers as to the quantities and times when purchased are produced from the parties of whom the same were purchased.

(14.) It is distinctly understood by the parties hereto, that no

other charge or charges whatever, but such as are herein particularized, are to be claimed or made either by the tenant or his valuer (or any umpire appointed) in any valuation hereafter to be made on the premises; but breach or neglect of any part or parts of the covenants and conditions herein specified, to be settled and agreed upon by the valuers or their umpire, who shall make such deductions from the valuation on account thereof, as to them shall appear reasonable and proper, and the balance of such valuation shall be paid to the tenant immediately on his delivering possession to the landlord, his agent, or incoming tenant.

(f) 125. Allowances of Tenant's Right to be paid upon quitting, provided that the respective Stipulations and Conditions relative thereto shall have severally been done and performed :—

(1.) One year's rent, parochial rates, labour and seed corn for all lands which shall in the season previous to quitting have been well summer-fallowed and manured in due course, but if the work shall have been done improperly, not any such allowances shall be due, and for manure and lime purchased and used as described in case a crop of corn, fodder or grass shall not have subsequently been taken and for carriage thereof.

(2.) For all clover and grass seeds sown, as specified, after a fallow crop, if not stocked or eaten after the first day of November.

(3.) For sowing wheat or grain in due course, and for ploughing and all labour done in conformity with the terms of agreement.

(4.) For sheaves of wheat or rye straw, and for one year's manure arising from the produce of the lands in the year preceding quitting.

126. *Underwood*.—The landlord shall covenant to pay the tenant, on quitting, for the growth of underwood since the last cutting.

127. *Permanent Improvements*.—To pay the tenant for any permanent improvements made to the lands, of which he

(f) These stipulations are in use at present in Nottinghamshire. upon the Duke of Newcastle's es-

shall not at the end of his tenancy have had the full benefit (f).

*Buildings.*

128. That the tenant may at any time erect any buildings or machinery, or make any permanent improvements in drainage, fencing, or otherwise, upon the conditions following:— That the tenant shall leave with the landlord a detailed account of the cost of all such buildings, machinery, or other permanent improvements within one month after their completion; that such buildings, machinery, or other permanent improvements shall relate only to the culture, fertilization, and working of the farm; that no allowance shall be made for any permanent improvements which shall not have been notified as aforesaid to the landlord. That if the tenancy shall be determined by the act or forfeiture of the tenant, no allowance shall be made to him for any such permanent improvements upon his quitting; but that he shall be bound, at the option of the landlord, either to leave such improvements in good repair and working order, or to remove such buildings and machinery, and to restore the farm and buildings to the state in which it was before such erections were made. But in case the tenancy is determined by the landlord, that then it shall be for the valuers or umpire to determine how far such buildings, erections, fences, drainage, and other permanent works have enured to the permanent benefit of the farm. That as to such buildings, erections, or other permanent works, as the valuers or umpire shall determine not to be for the permanent benefit of the farm, the tenant shall remove them and restore the farm to its original condition in this respect, or shall at the option of the landlord, pay the amount which shall be estimated by the valuers or umpire as the amount of deterioration of the farm, caused by such buildings, erections, or other permanent works. That as to such buildings, erections, or other permanent works, as the valuers or umpire shall determine to have enured to the

(f) In many Norfolk agreements this is the only stipulation as to permanent improvements, but it is very vague, and open to great controversy.

permanent benefit of the farm, the valuers or umpire shall take into consideration the length of time necessary for the tenant to repay himself the necessary cost of such buildings, erections, or other permanent improvements. And if the tenant shall not have remained in possession of the farm a sufficient time for this purpose, the arbitrators or umpire shall, taking into consideration the date of the notice of completion, fix the amount of compensation due to the tenant for the time intervening between the actual determination of his tenancy, and the period at which he would (if the tenancy had so long continued) have repaid himself the necessary cost of such buildings, erections, and permanent improvements respectively.

And it is further agreed, that in estimating the time in which the tenant would have repaid himself the cost of such buildings, machinery, or other permanent improvements (provided that at the determination of the tenancy they shall be found to be in substantial repair and working order), such time shall be calculated as follows:—buildings,        years; machinery,        years; fences,        years; drainage, four feet deep,        years; drainage, six feet deep,        years. Provided that no such allowance shall be made, unless such buildings, erections, machinery, or other permanent improvements are found to have been done in the best and most approved manner, and constructed of the best and most approved materials in use at the time such buildings, erections, machinery, or other permanent improvements were constructed, made, or done: and it is agreed and declared that in these provisions the term permanent improvements does not extend to include manures or tillages.

[I have drawn the above provision to meet the views of some of the agriculturists who were examined before Mr. Pusey's committee. I submit it with considerable diffidence and doubt, for it is a new covenant upon a point of much difficulty. It appears to afford sufficient protection to the landlord under ordinary circumstances, but of course it will not meet exceptional cases; such as that of a crotchety or shallow experimentalist, who may expend all his capital in doing injury to the farm.]

129. *Game*.—To allow the tenant compensation for game, or rabbits, whenever it exceeds        *l.* such compensation to be

fixed by two valuers and an umpire in the manner hereinafter provided for all valuations under this agreement [or under the lease] ; and the landlord to pay the costs of the valuation. But if the sum ultimately awarded shall be less than the sum of £., then all the costs of valuation as certified by the valuers or umpire to be deducted from the sum awarded as damage ; and if the costs of valuation of damage exceed the sum awarded as damage, then the excess to be recovered as additional rent by the landlord.

130. *Quiet Enjoyment.*—To permit the tenant peaceably to hold the premises during the term demised, on payment of the rents and performance of the covenants.

131. *Valuations.*—For provisions for appointment of valuers and umpire, see forms of leases, Nos. 1 and 2.

#### *Provisoes and Conditions.*

132. *Payment of Rent, &c.*—Provided that if the rents together with all additional rents, and all matters reserved as additional rents, or as in the nature of additional rents, are not paid to the landlord at his audit, the landlord may retake possession of the farm.

133. Provided also, that in case of breach of any of the covenants to be by the tenant performed, the landlord may take possession of the farm.

134. Provided also, that in case of the tenant becoming Bankrupt or Insolvent, the landlord may retake possession of the farm.

135. Provided also, that in case the tenant's stock on the premises, or any part thereof, should be taken in execution any time during the tenancy, or in case the tenant shall die between the 29th day of September and the 25th day of March, in any year during the continuance of the tenancy, or shall be declared bankrupt, or shall take the benefit of any act for the relief of insolvent debtors, or shall assign his effects for the benefit of his creditors, that then, and in either of such cases, the rent to the then ensuing Lady-day shall become due, and payable in advance ; and the landlord shall have power to enforce the immediate payment thereof ; and moreover the tenancy under the agreement shall be determined on the 25th



day of March following, without any notice having been given for that purpose by the landlord.

[See a more stringent form of proviso for re-entry, form of agreement for a lease, *ante*, p. 253, and the law upon this subject, *ante*, p. 243.]

136. *Determination of Tenancy by Notice*.—And it is further agreed that the said intended lease shall contain a provision that either party may determine the tenancy of the farm at any Michaelmas, by giving one year and a half's notice in writing; the notice to be given on or before the 25th March in the year next before the year in which the tenancy is intended to be determined (*g*).

137. *Not to operate as present Demise (h)*.—And it is agreed that this agreement is intended to operate only as an agreement for a lease, and not as a present demise.

138. *Custom of the Country excluded (i)*.—And that the present agreement comprehends all the covenants, stipulations, reservations, obligations, and allowances of the intended tenancy, excluding all customs of the country excepting such, if any such there be, as are alluded to in this agreement.

139. *Tenancy after Entry (k)*.—And that if the tenant shall enter upon the farm and premises after the signing this agreement and previous to the execution of the lease by this agreement contemplated, the tenancy shall be taken to be upon the terms, rents, covenants, reservations, obligations, and allowances of a parol lease from year to year in accordance with this agreement.

140. Provided that this instrument is not intended by the parties hereto to act as a lease, but only as an agreement for a lease.

And that if the landlord shall allow the tenant to enter upon the premises previous to the execution of the lease by this agreement contemplated, then the tenant shall hold as tenant from year to year from the 25th day of March [*or state the intended date of commencement*] in every year, and under the rents, covenants, and provisions in this agreement mentioned, as the same are to be set forth in the intended lease.

(*g*) If the ordinary six months' notice only is contemplated, this clause may be altogether omitted.

(*h*) See page 233, *ante*.

(*i*) See page 232, *ante*.

(*k*) See pages 144 & 233, *ante*.

## SECT. 3.—SPECIAL PRECEDENTS.

The following precedents are inserted because they are found in use by distinguished agriculturists, and because they are often adapted to particular local customs. They are not, however, recommended for *entire* adoption. In nearly every instance it would be advisable to recast their provisions according to the first common practical form, *ante*, p. 248, and to insert stipulations which will be found in that form.

No. 1. [This is the form of agreement alluded to by Mr. Trethewy in his evidence before the Agricultural Customs Committee.]

*Particulars of Tenancy adapted to Customs of Bedfordshire, and containing Provisions for outgoing Allowances, for Drainage, Fencing, and Manures.*

## PARTICULAR OF A FARM AND LANDS,

situate in the parish of                      in the county of  
belonging to the Right Honourable Thomas Philip Weddell, Earl de Grey, K. G., and now or late in the occupation of

	No. on the Map.	DESCRIPTION.	Grass Lands, Yards, &c.			Tillage Lands.		
			A.	R.	P.	A.	R.	P.
			Add Total to be used in Grass					
Total, be the same more or less								

NOTE.—All wood of every description is reserved to the landlord, with full power of entering on the premises, for managing, cutting, and carrying away the same; and all game, rabbits, fish, and wild fowl are also reserved to him,

with liberty for him and his keepers and servants, and other persons having his permission, to enter on the said premises, for the purpose of taking or preserving the same.

The Terms and Conditions on which the foregoing Premises are let to as the Tenant thereof.

The tenant agrees to take the same (subject to the reservations aforesaid) for the term of one year, from the 29th day of September, 18 , at the yearly rent of to be paid quarterly in four equal payments—the first on the 25th of December, 18 , the second on the 25th of March, 18 , the third on the 14th of June, 18 , and the fourth on the 29th of September, 18 ; to hold from year to year, determinable at the end of the first or any subsequent year, on six months' previous notice, in writing, given by either party for that purpose; the tenant paying all taxes, (except land-tax, and the landlord's property and income tax,) and all parish and other rates, and the tithe charged or to be charged on the said premises.

The tenant shall not take two white-straw crops in succession, nor break up and convert into tillage any old meadow, pasture or grass land, without the consent, in writing, of the landlord, or his agent.

The tenant to spend and consume on the premises all the hay, straw, and fodder, and all the turnips or other vegetable crops which shall arise therefrom, during the continuance of this holding, and to lay and spread thereon in a husbandlike manner all the manure arising therefrom, except such as shall be made in the last year of this holding, which, together with the unconsumed straw, (if any,) is to be left on the premises; the straw to be properly stacked and secured, without any compensation for either, except the expense of such stacking to be estimated as hereinafter stated; the hay to be valued at a spending price as also hereinafter mentioned; and if all the grain shall not be threshed out before the determination of this holding, the tenant to be allowed the use of a barn until the following.

The tenant, on request being made to him, at any time after the 1st day of April, in the last year of his holding, to permit the landlord or incoming tenant to enter upon and prepare the

land which shall then be in fallow in course for wheat ; but if no request be made for such permission, the tenant shall then prepare the same in husbandlike mannner, being paid for the labour as hereinafter stated.

The tenant to leave the valuation of all acts of husbandry done by him at quitting, and of the unconsumed hay and turnips, (if any,) left on the premises, and the estimate of all compensations customary on such occasions, to two indifferent persons, one to be named by him, and the other by the landlord or incoming tenant, or to their umpire, (such umpire to be named beforehand by such two indifferent persons,) and to abide by such arbitration in all matters about which any dispute may arise between himself and the incoming tenant.

The tenant to keep the said messuage and other buildings upon or belonging to the said premises in good repair, during the continuance of this holding ; and at the determination thereof to leave them so, being allowed by the landlord, on reasonable request, such timber in the rough, and bricks, tiles, stones and slates, (at the option of the landlord,) as shall be necessary for that purpose ; the tenant finding at his own expense all other materials, and all workmanship and carriage.

The tenant to keep, at his own expense, all the hedges, ditches, drains, walls, mounds, fences, gates, stiles, gateways, rails, pales, ways and watercourses, in, upon, or belonging to the said premises, in good repair, order and condition, during the continuance of this holding, and at the determination thereof to leave them so.

The tenant not to prune or lop any trees, but to weed and preserve all young quicks which are now or may be growing on the premises, and to cut and lay the old hedges at proper seasons, and as often as occasion shall require, effectually guarding the same, and opening the ditches and watercourses thereof.

The tenant not to shoot, course or otherwise sport, or destroy game or their nests, eggs or young on the premises, nor suffer any persons so to do, without the permission of the landlord, and at his request to sign notices discharging persons from so doing, or otherwise trespassing on the premises, and allow his name to be made use of in any action brought by the direction of the landlord against any such trespasser.

The tenant not to underlet nor assign the said premises, or any part thereof, without the consent of the landlord or his agent in writing. And if the tenant shall, during his holding under this agreement, have permanently improved the said lands or any of them by tile draining or otherwise, and the same shall have been approved, before the same was commenced, and whilst the same was in progress, by the landlord or his steward for the time being, and such approval, together with a certificate of the amount of the cost thereof, shall have been certified in writing on this agreement, or on the duplicate thereof, and have been signed by the landlord or his steward, and the tenant, when and so soon as such draining or other improvement shall have been completed, or during its progress, from time to time, then and in such case, but not otherwise, the tenant or his representatives, in case of his death, shall be allowed and paid by the landlord, on quitting the said premises, as follows: (that is to say,)

1st. Where the landlord provides tiles and other materials, and the tenant pays for labour and cartage.

In case the tenant shall cease to hold under this agreement within six years from the date of such certificate, the said tenant or his representatives, in case of his death, shall be allowed and paid by the landlord the amount stated in such certificate, after deducting therefrom a sixth part thereof, in respect of each entire period of twelve months expired since the date of such certificate.

2nd. Where the tenant provides all tiles and other materials, labour and cartage for such draining.

In case the tenant shall cease to hold under this agreement, within twelve years from the date of such certificate, the said tenant, or his representatives in case of his death, shall be allowed and paid by the landlord the amount stated in such certificate, after deducting therefrom a twelfth part thereof, in respect of each entire period of twelve months expired since the date of such certificate.

And if the tenant shall at his own expense, plant and preserve new fences, subject to such approval and certificate as aforesaid, and shall cease to hold under this agreement, within ten years from the date of such certificate, then the said tenant, or his representatives in case of his death, shall be

allowed and paid by the landlord the amount stated in such certificate, after deducting therefrom a tenth part thereof, in respect of each entire period of twelve months expired since the date of such certificate.

And if the tenant shall, at his own expense, marl any quantity of land, subject to such approval and certificate, as aforesaid, and shall cease to hold under this agreement, within four years from the date of such certificate, then the said tenant or his representatives, in case of his death, shall be allowed and paid by the landlord the amount stated in such certificate, after deducting therefrom a fourth part thereof, in respect of each entire period of twelve months expired since the date of such certificate.

And if the tenant shall, at his own expense, manure any portion of the land for green crops, during the last year of his holding under this agreement, with bone-dust, guano or any other artificial manure, subject to such approval and certificate as aforesaid, then the said tenant, or his representatives in case of his death, shall be allowed and paid by the landlord half the amount stated in such certificate, provided always that no second crop shall have been taken from the land so manured.

Any other permanent improvement that the tenant may wish to make, to be subject to a special agreement between the landlord, or his agent, and the tenant.

No. 2.—[This is the form of agreement alluded to by Mr. Kersey, in his evidence before the Agricultural Customs Committee.]

*Adapted to the Customs of Suffolk, with outgoing Allowances.*

THIS AGREEMENT (a) made the                      day of                      , in the                      year of our sovereign lady Victoria the First, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and in the year of our Lord one thousand eight hundred and                      , in the county of Suffolk, of the one part,                      in the said county,

(a) This instrument clearly amounts to a lease, and wants no other of the ordinary forms of a lease than that the word agreement should be changed to indenture.

of the other part :

Witnesseth, that the said John Tollemache, in consideration of rent, covenants, and agreements hereinafter mentioned, doth demise and to farm let unto him the said his executors and administrators, all that messuage or tenement and farm called or known by the name of , with the barn , stable , outhouses, lands, and hereditaments, now occupied therewith, aforesaid, and herewith more particularly mentioned in the schedule, all which lands contain by admeasurement be thereof more or less, except nevertheless and reserved out of this demise and lease, as not intended to be hereby letten, all groves, plantations, and aldercars, and the respective soils thereof; and all fish which at any time shall be in any moat, pond, or water, parcel of the said premises; and all game which, during the continuance of this demise shall be thereon; and all timber trees, pollards, and other trees, stands of trees, saplings, loppings, alders, salallows, willows, wood, thorns, bushes, and whins, other than such allowance thereof as thereafter mentioned; and also, except and reserved free ingress, egress, and regress for the said John Tollemache, his heirs and assigns, and for his and their stewards, agents, workmen, servants, gamekeepers, and followers into, over, and upon, and from the said demised and excepted premises, at his and their free wills and pleasures, for the purpose of sporting, and for felling and converting timber and wood, cutting bushes and whins, digging stones, crag, sand and gravel, and carrying away the same, and for altering, rebuilding, or repairing any of the buildings, gates, lifts, and other the premises hereby demised or excepted, and for all other reasonable purposes whatsoever. To hold the said demised premises subject to the payment of as shall arise and become due and payable to his heirs and assigns, unto the said executors and administrators, from the eleventh day of October, 1851, for one year, and so from year to year until the term shall be determined at the end of the first of any subsequent year by six months' notice in writing, to expire on the eleventh day of October in that year [or for twenty-one years], yielding and paying therefor yearly, during the said term, unto the said John Tollemache, esquire, his heirs and

assigns, the rent or sum of \_\_\_\_\_ of lawful money of the said United Kingdom, as used in England, by four equal payments, one on the sixth day of January, the sixth day of April, the sixth day of July, and the eleventh day of October \_\_\_\_\_, and for the last half-year thereof, on the first day of September next, before the expiration thereof. All which payments are to be made at or in the mansion house of the said John Tollemache, situate in Helmingham aforesaid. And yielding and paying also unto the said John Tollemache, his heirs and assigns, such respective sums of money as are hereinafter set for breach or non-performance of any of the covenants or agreements, herein-after mentioned, when and as any shall happen to become due. And the said \_\_\_\_\_ for himself and his executors, and administrators, doth hereby covenant, promise, and agree, with and to the said John Tollemache, his heirs and assigns, well and truly to observe, perform, and keep, the several and respective articles, covenants, conditions, and agreements hereinafter mentioned, which, on his and their parts, are to be observed, performed, and kept, (that is to say,) That he the said \_\_\_\_\_ his executors and administrators shall and will well and truly pay, or cause to be paid, unto the said John Tollemache, his heirs or assigns, the said annual rent or sum of \_\_\_\_\_ hereby reserved and made payable, and such respective sums of money as are hereafter set for breach or non-performance of any of the covenants hereinafter mentioned, when, and as the same shall respectively become due and payable. And also, that he the said \_\_\_\_\_ his executors or administrators, shall and will make the farm-house the general residence of himself and family, or pay 10*l.* a month for every month above two, which in any year a failure shall be made therein; and shall and will fetch and carry gratis, all materials for re-building, repairing, or altering any of the demised buildings and premises, not exceeding the distance of twelve miles, and lay the same convenient for use; and shall and will, if required, do gratis \_\_\_\_\_ carting yearly, for the said John Tollemache, his heirs and assigns, not exceeding the distance aforesaid, with a wagon and four horses and two men to attend them, at such time and times as he or they shall request; and moreover, shall and will yearly, when required,



bring from Ipswich and deliver at Helmingham Hall, aforesaid, by way of back carriage,                      tons of coals, without any allowance to be made therefor ; and also, if required, find and deliver for the said John Tollemache, his heirs or assigns,

loads of good dry wheat or rye straw, at any place not exceeding the distance aforesaid, being paid therefor the sum of one guinea per load—but no requisition for those purposes to be made in seedtime, haysale, or harvest. And also, shall and will find gratis, good and sufficient wheat or rye straw, for thatching or daubing with clay any of the buildings of the said demised premises as shall be required ; and also, find and provide gratis the usual allowance of beer for workmen when employed in any re-buildings or reparations on the said premises, and a ladder of thirty steps for their use ; and shall and will cause the chimneys of the said demised premises to be clean swept when wanted, and at least twice in the year ; and shall and will do yearly, where most wanted,

of ditching, banking, and hedging, making the ditches of proper widths and depths, but not more than five feet and a half wide at top, twelve inches at bottom, and four feet deep, using the earth in all cases after the first spit, for improving the banks, and planting where wanted whitethorn or blackthorn spring, and putting in two plants or sets of oak, ash, or elm, in every rod: being allowed the whitethorn spring, also fencing stuff for those purposes, if to be found on the premises. And shall and will do or cause to be done in a husbandlike manner, at his or their costs and charges, such underdraining upon the said demised lands as may be necessary ; and also, that he the said                      , his executors and administrators,

shall and will, at their own proper costs and charges, keep and leave in good repair the glass and lead of the buildings and farm house hereby demised ; the boxes, suckers, and going gears of the pump, and all gates, lifts, stiles, posts, pales, rails, bars, bridges, watercourses, ditches, grips, drains, and fences belonging to the said demised premises ; and all the paths, passages, gangways, gateways, finding gateirons, nails, and all other materials of good and proper sorts for the doing thereof, except rough timber and wood, which are to be allowed him and them for all those purposes, and also stakes and bushes, if such stakes and bushes can be found on the premises, but not

otherwise ; and also that he the said \_\_\_\_\_, his executors and administrators, shall and will well and truly pay, or cause to be paid unto the said John Tollemache, his heirs or assigns, at the time of paying the Michaelmas rent, one moiety or equal half-part of wages and workmanship of all carpenters, sawyers, bricklayers, blacksmiths, thatchers, clay daubers, and other artificers, who shall at any time during the said term be employed by the said John Tollemache, his heirs or assigns, in and about the repairing of the farm-house and other buildings of the said demised premises, (not hereinbefore covenanted to be done at the sole expense of the said \_\_\_\_\_, his executors and administrators,) the said John Tollemache, his heirs or assigns, paying the other moiety or half-part thereof ; and also that he the said \_\_\_\_\_, his executors or administrators, shall and will during the said term inbarn or stack upon the premises all the corn and grain which shall yearly grow thereon, and there thresh and dress the same ; and there feed and fodder out all the turnips, hay, straw, clover, chaff, and stover yearly arising therefrom, or pay five pounds for every wagon load of corn in the straw, hay, clover, turnips, or stover, which shall be carried off contrary to the true intent and meaning of these presents, and so in proportion for a lesser quantity ; except, nevertheless, the straw to be reserved for landlord's use, and for thatching and daubing, and the last year's crop of hay and stover, which crop of hay and stover shall not exceed \_\_\_\_\_ acres, with the straw, chaff, and stover which shall be left upon the premises for the benefit of the estate ; such hay and clover to be paid for by valuation, and, as a satisfaction for such straw, (except as aforesaid,) colder, caving, and chaff, which shall arise in the last year of the said term, the said John Tollemache, his heirs or assigns, or the succeeding tenant, shall pay the expense of carrying the last year's crop of corn to market, and also as much money for the threshing and dressing of it as shall be thought reasonable, such carriage not to exceed the distance of fourteen miles, and carrying at each going (except the last) not less than twenty coombs ; and shall and will yearly spread upon the said demised lands all the muck, dung, and compost, which shall yearly arise therefrom, except such as shall arise in the last year of this demise before the first day of June,

which shall by that time be cast over into heaps, in order that it may be then or afterwards taken and used upon the summerlands, or clover, or grass layers to be left; such last year's muck, dung, and compost to be paid for by valuation; and also, that he the said , his executors and administrators, shall and will farm, and keep the arable lands hereby demised, in a course of four-shift husbandry, so that there shall be in each year one fourth part thereof in clean summerland, or summerland for turnips or other roots; one other fourth part thereof in barley or other spring corn, sowing thereon a sufficient quantity of good new clover seeds, or other improvable grass seeds; one other fourth part thereof in clover of one year old, or other improvable grass layers; or in lieu thereof, one eighth part in such layers, and the other eighth part in beans, peas, or other green crops, and the other fourth part thereof in wheat; and then again in the next year, one fourth part thereof in summerland as before, and so on in the same manner, as arable lands thrown into and farmed into four-shift husbandry ought to be farmed and kept, or as near thereto as the size of the fields will admit of, or pay for every breach of covenant, annually from the time of breaking thereof, during the continuance of the said term, at the rate of forty shillings an acre, as an increase of rent: Provided, nevertheless, that immediately before the taking of any crop of beans or peas or wheat, the lands on which such crops shall be intended to be taken shall be properly mucked, and only one crop of corn or grain taken thereon after a crop of beans or peas or a clover layer, before a clean summerland to be made thereof, or summerland for turnips or other roots. And provided also, that such peas or beans shall be clean hoed, at least twice, at proper seasons, and at proper distances of time; and that those lands on which one round or course of cropping beans or peas shall be taken after a spring crop of corn or summerland, shall in the next round or course be in clover, or other improving grasses, and so on alternately during this demise, in order that any piece of land shall be summer fallowed once in four years.

*Outgoing Allowances.*—And it is hereby agreed, that for the summerlands to be left in the last year, and for the clover seeds and sowing thereof with the summerlands crops of corn

in that year, and for the two-year old layers, and for the bean and pea stubbles, if mucked, and for all under-draining, clay-ing, or other unexhausted improvements, as much money shall be paid as the same shall be reasonably worth, to be valued in manner hereafter mentioned; and that it shall be lawful for the said John Tollemache, his heirs or assigns, and at his and their request, or for their succeeding tenant, to enter upon half the summerlands to be left in the last year, at any time after the first of June in that year, and the remaining half of the summerlands, with the second crop of clover to feed or otherwise, with a stable for horses, and lodging for a man, and liberty of egress and regress thereto, on the first of August in the same year; and also, that the said                    his executors and administrators, shall and will at his and their own expense, keep a dog upon the said demised premises, for the use of the said John Tollemache, his heirs or assigns, if required so to do; and also, shall and will preserve all fish and game upon the premises, for the sole use and pleasure of the said John Tollemache, his heirs, or assigns; and at his and their request forbid and warn all persons from fishing, sporting, or otherwise trespassing on the said premises; and shall and will permit the said John Tollemache, his heirs, or assigns, at his and their proper costs and charges, to prosecute any one in the name of the said                    , his executors and administrators, for fishing, sporting, or trespassing thereon, and use his and their best endeavours to have the same carried on with effect: and shall and will, when required, bush the fields belonging to the said demised premises, during the sporting season, in the usual way for the preservation of game. And the said                    doth hereby for himself, and his executors and administrators, further covenant and agree to and with the said John Tollemache, his heirs and assigns, that neither he nor they shall or will plough, dig, or break up border or bank of any piece of arable land, nearer than four feet to the stake on the bank side: nor dig, manure, or break up the border, bank, or headland of any piece of pasture land, but pay ten shillings a rod in length for every breach of this covenant: nor plough, dig, or break up any meadow or pasture land whatever, (other than new grass layers, not laid down for continuance), but pay annually from the

breaking up any part thereof, and so forth, or during the continuance of this demise, the sum of 5*l.* an acre as an increase of rent, and in that proportion for a lesser quantity : Nor trim up or cut down, lop or top, any timber tree or stand, nor any pollard tree whatever, (except as hereafter allowed,) but pay 10*l.* for every timber tree or stand, and 5*l.* for every pollard tree which shall be lopped, trimmed up, or cut down, over and above the respective value of any such tree or stand : Nor cut, top, or buckhead any hedge or fence in a general way, but where the annual ditching shall be done : Nor take or carry away any stone, earth, or soil, from or near the situation of any building, lower than the common level of the ground, or so as to endanger the pinning thereof, but pay 40*s.* for every breach of this covenant : Nor mow any meadow or pasture lands more than twice in succession (except as to bushing and skimming thereof for cleaning, and except borders of arable lands) without mucking the same, with at least fifteen tumbril loads of good rotten muck or dung an acre, but pay 40*s.* for every breach of this covenant. And the said John Tollemache doth hereby for himself, and his heirs and assigns, covenant and agree to and with the said \_\_\_\_\_, his executors and administrators in manner following, (that is to say) that the said John Tollemache, his heirs or assigns, shall and will keep in good tenantable repair, the farm house, and other buildings hereby demised, except in such parts thereof as hereinbefore covenanted, to be done by the said \_\_\_\_\_, his executors and administrators : he the said \_\_\_\_\_, his executors and administrators, performing his and their covenants for the one moiety in equal half-part of the expense of wages and workmanship attending such repairs as hereinbefore mentioned. And also, shall and will allow the said \_\_\_\_\_, his executors and administrators, during his demise, necessary and proper timber or rough wood, to be taken by assignment of the said John Tollemache, his heirs or assigns, stewards or agents, for repairing the gates, lifts, stiles, posts, pales, rails, and bars, belonging to the said demised premises ; and also stakes and bushes for making, mending, and repairing the hedges, ditches, grips, drains, and fences thereof ; provided sufficient stakes of seven years' growth and bushes can be found upon the said pre-

mises, but not otherwise. And shall and will allow him and them the loppings of such pollard trees as have been usually lopped by the tenant, and as are of seven years' growth, and not above twenty. The same to be taken by the assignment of the said John Tollemache, his heirs or assigns, or his or their agents or stewards, and which, together with the thorns and stubs not used for fencing, shall be taken for firing, to be burnt in the farm-house, or in the back-house, or copper-holes; which said timber or rough wood for repairs, and also stakes and bushes for hedging, and loppings for firing, are to be cut, taken, fetched, and carried, by and at the costs and charges of the said , his executors and administrators, at seasonable times in the year. And shall and will permit the use of the barn and stack yards until the first day of May next after the expiration of this term or demise, for the purpose of threshing and dressing the corn which shall grow in the last year. And it is hereby mutually covenanted and agreed by the parties hereto, that all allowances to be made by valuation, shall in all cases be made by two judicious men, one to be chosen by each party, or by an umpire to be nominated by such two persons if they shall disagree, and whose determination shall be final. And no receipt for rent shall be a discharge for any sum or sums of money which shall become due or payable for any breach or non-performance of any covenant or agreement, unless in such receipt it shall be so expressed. And further, that in every instance such sum or sums of money as are hereinbefore set for breach, or non-performance of any covenant, shall be considered as ascertained and liquidated damages, and not merely as penalties unascertained in value. Provided always, and it is hereby further mutually covenanted, declared, and agreed, by and between the parties hereto, that if it shall happen that such sum or sums of money as last before mentioned, or the said reserved yearly rent of or any part or parts thereof, shall be unpaid for the space of twenty days next after any such respectively shall become due, it shall be lawful for the said John Tollemache, his heirs and assigns, to recover the same, and every part thereof by entry, distress, and sale, as or in the case of rent in arrear. And where no distress shall be found upon the

said demised premises sufficient to answer and pay the cause of any such distress and the charges thereof, or if the said \_\_\_\_\_, his executors or administrators, do assign or underlease all or any part of the said demised premises, for all or any part of the term hereby granted, or otherwise part with the possession of the said premises, or any part thereof, without the consent in writing of the said John Tollemache, his heirs or assigns; or if the said \_\_\_\_\_, his executors, or administrators, or any of them, shall commit any act of bankruptcy within the intent and meaning of the statutes, made or to be made in relation to bankrupts, whereon a commission shall issue, and he and they be declared a bankrupt or bankrupts; or if he or they shall make any composition with his and their creditors for the payment of their debts, (although no commission shall issue) or shall make any assignment of his or their effects for the benefit of creditors, or if the said demised premises shall be assigned or become assignable during the said term for all or any part thereof, for or by reason or on account of any act of insolvency, or by virtue of any writ of execution, or by any other act or means in the law whatsoever; or if the said \_\_\_\_\_, his executors and administrators, or any of them, shall be sued, arrested, or imprisoned, or otherwise rendered personally incapable of carrying on the occupation of the said premises, or if any breach shall be made by him or them in all or any of the covenants or agreements herein contained, which on his and their parts are to be observed, performed, and kept, then and upon any of the said cases happening, or at any time afterwards, it shall be lawful for the said John Tollemache, his heirs or assigns, into the said demised premises or any part thereof to re-enter again the same premises, to have again, repossess, and enjoy as his and their first and former estate and right, and anything hereinbefore contained to the contrary thereof notwithstanding. In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

PARTICULARS of a farm in the parish of                      in the  
county of Suffolk, belonging to John Tollemache, esquire,





the rack yard as may be necessary to stack his off-going crop of wheat in, and to allow the use of                      barn to thresh the same in, together with such part of the fold as the said landlord shall think proper for                      months after the expiration of this tenancy; the off-going crop of wheat not to exceed                      acres; and all above that quantity, found growing upon the said farm, at the expiration of this tenancy, shall be forfeited to the said landlord.

And the said                      agrees to take the said farm, house, buildings, lands, and premises, from the                      day of                      at the yearly rent of                      payable half-yearly, the first payment to commence on the                      day of                      and the said                      further agrees to pay all taxes, rates, and charges which now are, or which, during his occupancy of the said farm, lands, and premises, may be charged upon the same, (the land tax and chief rent only excepted).

And the said                      agrees to except the before-excepted crops, lops, and tops of trees and pollards, waste lands, pits, and breaks, and the underwood, thorns, and brush, growing thereon; and not to deteriorate the value, or impoverish any part of the said farm or land; and further, that he will not, during any part of his tenancy, sell, or otherwise dispose of, any of the hay, straw, or haum grown upon the said farm, or from the tithe thereof, but will spend and consume the same thereon, and particularly so in the last year, by cattle in the fold, and elsewhere; and during the whole tenancy, apply all the manure upon the said farm, and cultivate the same, and every part thereof, in a proper and husband-like manner.

And he further agrees to keep and leave all the gates, posts, stiles, rails, pails, mounds, and fences in good repair and condition; as also the inside of the said messuage, house, and buildings; being found timber in the rough, together with brick and lime for the same, to be hawled to the place by the tenant; and that he will keep and leave all the glass in the said messuage, house, and buildings, in good repair.

And the said                      further agrees to hawl all materials for repairs the landlord may think necessary; and further, to find a sufficient quantity of good wheaten straw to repair the thatch of the buildings; and particularly a sufficient quantity of good wheat straw from his offgoing crop of wheat, to repair

such buildings as require the same, the year after the expiration of his tenancy.

And the said further agrees in the last year of his tenancy to sow acres of grass seeds with lb. of good red clover, and lb. of white, and grass, to each and every acre; and further, that he will use his best endeavours to preserve the fruit trees; and that he will keep well planted all the present hop grounds, and leave all new ones he may plant, for the benefit of the tenant who may succeed him, without any compensation for the same.

And the said further agrees, he will not shoot, course, or hunt, over or on any part of the said lands, nor permit or suffer any person or persons so to do, and will use his best endeavours to preserve the game for his said landlord, and will allow his name to be used in all suits and actions of trespass; and will, at the request of the said landlord, notice off, and, as far as he can, prevent, all persons trespassing upon the said lands and premises; and that he will give all and any interest he may have in the tithes of the said lands, at the expiration of his tenancy, to the said landlord, without any compensation for the same.

No. 4.—[*This Nottinghamshire agreement was settled by Mr. Thomas Smith Woolley, a gentleman of the very highest authority, upon all matters connected with land and agriculture.*]

#### MEMORANDUM.

I the undersigned of in the county of do hereby agree to rent or hold of of in the county of Nottingham, esquire, for one year from the sixth day of April last, and so on from year to year, until six months' notice shall be given by either party to quit at the end of the first or any subsequent year; all on the terms and according to the conditions hereinafter specified, that is to say,

To pay or cause to be paid by equal half-yearly or quarterly payments, as the same shall become due and be demanded by the said or his agent, the annual rent or sum of and the further sum of the annual premium of the insurance upon the said house and buildings.

To pay or cause to be paid all parochial, parliamentary and other rates, taxes and charges whatsoever, which are or hereafter may be charged upon the said farm during my tenancy thereof.

To maintain and keep in a proper state of repair, all buildings, fences, gates, stiles and bridges, and to leave them in that state when I shall quit the farm.

To cut, cleanse, scour, and keep, at a sufficient width and depth, all ditches, drains, and watercourses.

Not to lop, top, or prune any timber or other trees, but to protect and guard the same from injury by cattle or otherwise.

Not to sell off, or carry away, or suffer to be sold off or carried away, any turnips, clover, tares, cabbages, or other green food, nor to let the said crops nor any of them stand for seed, but to consume the same upon some part of the farm with cattle, or sheep.

To consume all the hay, straw and stubble, grown on the said lands with cattle, and expend all the manure and compost arising therefrom in a proper and husbandlike manner on such parts of the land as shall most require it; except the produce of the last year of my holding the said lands, which shall be properly made into manure, and left for the use of the said

or the incoming tenant, without any compensation for the same.

Not to plough or sow any of the lands after giving or receiving notice to quit, but to permit the said or his succeeding tenant, to enter upon such lands as should in due course be sown with wheat on the first day of October, after notice as aforesaid, for the purpose of ploughing and sowing the same, on such lands as are in turn to be sown with spring corn after seeds, on the first day of February; and on turnip and cole land as soon as the crop is eaten off—but if the said

or his incoming tenant do not choose to enter and sow the corn, then to plough and sow such lands with good seed in a proper and husbandlike manner, as the said or his incoming tenant shall direct, being allowed a fair compensation for the same by the said or his incoming tenant; such compensation to be fixed by two disinterested valuers, one to be chosen by each party, or by an umpire appointed by the valuers before entering upon the business.

To be allowed on quitting the said farm, by the said one half part of the cost price of all linseed cake eaten upon the said premises during the previous year, and one half of the cost price of all bones used upon land from which no other than a green crop shall have been taken since the application of the said bones to the said land.

To shut up the young seeds from sheep and cattle after Martinmas, for the use of the said or his succeeding tenant, being allowed the cost price of seeds, and for labour in sowing, if the land was in a proper state when sown and the seeds of good quality.

To pay twenty shillings per acre for all land not sown with seeds in due course.

To pay one hundred pounds per acre for each and every acre of old grass land ploughed up or converted into tillage, without consent in writing of the said or his authorized agent, such lands to be considered old grass land as are described as pasture or meadow land, in the annexed schedule.

To pay ten pounds per acre for each and every acre of the said land, underlet without consent in writing of the said or his agent for the time being.

To preserve the game on the said lands for the use of the said discharging all other persons from killing or destroying the same, or from trespassing upon any part of the land in search of game, or for any other purpose, without his authority.

The said or whomsoever he shall appoint to have full liberty to enter at all seasonable times upon the said premises, for the purpose of shooting, coursing and fishing, or for any other purpose, the said or his agent may think proper.

To till, order, and cultivate, the arable lands in a proper and husbandlike manner, according to the best and most approved system of husbandry, on the following or such other course, as to have at all times, not less than one fifth part fallow, turnips, tares, or other green crop, and one fourth part seeds pastured ; and so also as never to have two crops of white corn in immediate succession, or so much as half the arable land in white corn at one time.

*1st Round (of Four Years).*

- 1st Year—Fallow, or green crop.  
 2nd ——— Barley.  
 3rd ——— { Red clover—mown if required ;  
                   { Or beans well hoed and cleaned.  
 4th ——— Wheat.

*2nd Round (of Six Years).*

- 1st Year—Fallow.  
 2nd ——— Barley or oats.  
 3rd ——— Seeds, not red clover, pastured.  
 4th ——— Ditto.  
 5th ——— Beans or pulse crop, well hoed and cleaned.  
 6th ——— Wheat (s).

## SCHEDULE.

No.	NAMES OF FIELDS.	Cultivation.	Quantity.

No. 5.—*Culture Stipulations adapted to the Customs of Notts., and to Clay and heavy Lands where the Growing of Turnips after Fallows is injurious to the succeeding Crop unless high Cultivation and complete Underdraining are adopted.*

And also that the several closes, pieces and parcels of land which are particularly described in the schedules which are annexed hereto shall be farmed and managed in such manner as is stated in the said respective

(s) The above course of cropping is for clay land.

For sand land there is not perhaps any rotation better than the Norfolk "Four-course Shift," viz.:

1st year, Turnips.

2nd year, Barley, with clover or grass seeds.

3rd year, Seeds.

4th year, Wheat.

But so long as the general conditions which precede the special stipulation as to the round of crops are complied with, the tenant may be left to choose his own course of cropping.

schedules, subject to the penalties hereinafter specified to be paid as and for additional rent, in case of any deviation from or of any breach or breaches being made in the covenants of this agreement: And it is hereby further agreed that after receiving or giving a notice to quit the said

shall either by writing under hand to sow in due course and proper manner during the month of October or before the seventh day of November then next ensuing

acres of wheat or other grain as may be specified, or that he the said shall at any time after the delivery of a notice to quit be empowered to have ploughed, sown,

and harrowed, whatever lands he may choose: And it is hereby agreed that stable-room for horses to be so employed shall be given up by the said :

And it is further agreed that on the first day of February, immediately succeeding the giving a notice to quit by either of the said parties as aforesaid, the said

upon receiving notice in writing to such effect from the said

his successors or agent, shall and will give up possession to the said his successors or agent, of a sufficient stable for horses and of such lands comprised in the

annexed schedule B. which shall have produced crops of clover or grass seeds in the two preceding years, and also of every part of the lands comprised in this agreement which according to the tenor thereof are to be fallowed in the succeeding season: And also that on the fourteenth day of February immediately succeeding the giving a notice to quit by either of the said parties as aforesaid one half of the lands held under this agreement which shall have been sown with turnips or other green crops in the summer immediately preceding shall be given up by the said to the said

his successors or agent, upon notice being given to such effect, or that the said shall do such labour required to be done on the said lands: And that

the said after giving up possession of the said stable and lands at the periods aforesaid or doing the sowing and other labour thereon, and upon giving up the remainder of the said premises and land on the twenty-fifth day of March next ensuing, after the giving of notice to quit as aforesaid, shall be entitled to be allowed and paid for one year's rent and paro-

chial rates for all the lands which shall have been well summer fallowed in due course by four orders of ploughing and sufficient dragging and harrowing and other reasonable labour, and which lands so fallowed shall have been manured with

cart loads, at the least, of manure made from the produce of or made upon the same farm, and which lands shall not have produced a crop of any description since the summer fallowing thereof, and the said shall be paid for the labour of summer fallowing such lands, provided that four orders of ploughing and other reasonable and proper labour shall have been given thereon, but not otherwise, and for the carriage of and spreading manure or lime purchased for and used on the said lands so fallowed : And that the said shall be paid for the clover and grass seeds sown by

in due course, upon the said lands, between the first day of March and the twenty-fifth day of April in the year preceding quitting, and for labour in sowing and harrowing the land then sown with such seeds, provided that the seeds shall not have been stocked or eaten after the first day of November preceding quitting, and that shall be paid for all seed-wheat and other grain then sown in due course upon the said lands and for labour in ploughing and harrowing such land then sown with wheat by the said : And it is further agreed that the said shall tie up sheaves of wheat

straw from the crop of the year preceding quitting, which shall be paid the value of, and shall be paid the value of one year's manure arising from the produce of the said lands in the year preceding quitting, upon such manure being made in a proper manner, and that the said shall be paid for all manure and

lime that shall have been bought and used upon the farm for the fallows of the year preceding quitting and for the carriage and spreading thereof, and also that the said shall upon quitting be paid for all manure used by upon such of the said lands as shall not afterwards have produced corn, grain, fodder, grass, or potatoes, and for the carriage and spreading thereof,

And it is further agreed that the said shall be liable to pay to the said or his successors, the

following additional rents or penalties or penalty, that is to say, for each and every tree or sapling felled, cut, or injured by or by order of            the said            the additional rent of 5*l.*; For all or any part of the lands of the said farm which are comprised and specified in the annexed schedule marked A. which shall be ploughed, dug, broken up, or converted into tillage, the additional rent of 20*l.* an acre; And for any part of the lands comprised and specified in the said schedule marked A. which shall be mown the additional rent of 5*l.* an acre: And the additional rent or penalty of 5*l.* an acre for each and every acre of land comprised in the said schedule annexed hereto, which shall be cropped otherwise than in the manner specified in the said schedule           , unless            the said            shall have obtained the consent in writing of the said            or his agent for any specific deviation therefrom: And in case all or any part of the lands of the said farm shall be underlet by            the said            the additional rent or penalty of 5*l.* an acre, and in proportion for a greater or less quantity; For every wagon or cart-load and every less separate quantity of hay, fodder, straw, stubble, potatoes or other root crops, green produce, manure, soil or compost which            shall take or suffer to be taken off the said premises or lands without leave in writing from the said            his successors or agent, the additional rent or penalty of 5*l.*, and of 10*l.* when more than a ton shall have been taken at any one time; For refusing to plough and sow land or not allowing the same to be done as specified herein, the additional rent or penalty of 5*l.* an acre; For neglecting to repair the said buildings, hedges, ditches, gates, posts, stiles, walls, soughs, and fences, after receiving one month's notice in writing to such effect from the said            his successors or agent, the additional rent or penalty of 10*l.*, besides a penalty of the amount of the necessary expenses of any repairs whereof any such notice shall be given, and which it is hereby agreed the said            and his successors shall in every such case be empowered to have done, and charge the amount so expended as and for additional rent: For every acre of corn, grain, or fodder which shall be grown upon the said lands exceeding            acres in any year            the said            shall pay the additional rent or penalty of 5*l.*; and for



every acre of woad, flax, turnip seed, cole seed or mustard seed, or other seeds not usually grown on the said lands, the additional rent or penalty of five pounds, and so in proportion for a greater or less quantity. And treble the sum as additional rent or penalty which the said

or his successors or agent shall expend for destroying or preventing thistles, docks or other weeds from growing into seed upon any of the said lands after the neglect of the said

to destroy them, after receiving one week's notice to such effect from the agent in writing: The first payment of all and every of which said additional rents and penalties shall become due and payable to the said or his successors

when the next rent for the said farm, lands and premises shall become payable after any trees or saplings shall have been felled, cut or injured by or by order of the said

; or any such ploughing or mowing of the lands comprised in the first schedule A.; cropping any of the lands comprised in the schedule contrary to the specification contained therein, underletting, disposing of produce, neglecting to repair after receiving notice, excess of cropping, growing woad or seeds specified herein to be prohibited, neglecting to destroy weeds after notice, shall have been respectively done committed or omitted by the said : And

for overholding all or any part of the said premises and lands after the period for which notice to quit the same shall have been duly given the said shall be liable to

pay the said or his successors double the amount of the said yearly rent of hereby made payable, as a

penalty, and which shall become due immediately after any such overholding, as and for additional rent: And it is further hereby agreed that such additional rents and penalties or any of them shall continue during the remainder of the tenancy and shall be payable at the same times and recoverable by distress or otherwise in the same manner as the said yearly rent of is by law recoverable: And it is hereby agreed

that a valuation of tenant's right due to the said under this agreement shall be made in the second week of March, immediately after the giving of notice to quit by either of the said parties, by two indifferent and disinterested persons, being competent arbitrators, one to be chosen by or

on the behalf of each party; and in case of their not agreeing in respect to the matters referred to them, then such valuation shall be completed by an umpire, to be appointed by such arbitrators before they proceed in their arbitration, and whose award shall be considered as the determination of such arbitrators: Provided always that if after fourteen days' notice in writing or on the behalf of either of them the said                    or the said                    to the other of them either party shall refuse or neglect to appoint an arbitrator before the second week in March then next ensuing, the party so refusing or neglecting, after receiving such notice, shall be precluded from appointing an arbitrator in the business and shall be bound by the award of the arbitrator appointed by the other party in respect to such valuation.

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### Schedules.

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*No. 6. [The following form was settled by Mr. Parkinson, and approved by the Court of Chancery.]*

ARTICLES OF AGREEMENT, made and entered into this day of                    in the year of our Lord 185 , between John Parkinson, of Ley Fields, near Newark, in the county of Nottingham, land agent, (the receiver appointed by the High Court of Chancery, of the rents, profits and produce of certain estates, settled by and subject to the limitations contained in the will of William Aubrey de Vere, late Duke of St. Albans, of which said estates the hereditaments hereinafter mentioned form part,) of the one part, and                    of Pickworth, in the county of Lincoln,                    of the other part.

Firstly. It is hereby agreed that throughout this agreement, the word "landlord," shall during the minority of William

Amelius Aubrey de Vere, the present Duke of St. Albans, who attained his age of nine years, on the 15th day of April, 1849, be construed to mean and include the said John Parkinson as such receiver as aforesaid, or other the receiver for the time being of the said estates, to be appointed by the said High Court of Chancery, and shall afterwards be construed to mean and include the said William Amelius Aubrey de Vere, Duke of St. Albans, or other the person or persons for the time being entitled to the premises hereby agreed to be let, expectant on the expiration or sooner determination of the term intended to be granted or created in pursuance of this agreement; and that the word "tenant" shall be construed to mean and include the said

And the said John Parkinson doth hereby agree to make or grant to the said tenant, and he the said tenant doth hereby agree to accept a lease for one year from the 6th day of April last, of

as the same are specified in the schedules to this agreement marked respectively at and for the clear yearly rent of £ payable by equal quarterly payments, that is to say, on the 6th day of July, the 11th day of October, the 7th day of January, and the 6th day of April, in the year, the first quarterly payment to become due on the 6th day of July next, and at the additional yearly and other rents hereinafter reserved, and upon the same terms and the conditions herein specified from year to year, so long as the said parties shall mutually agree.

And it is hereby agreed that the tenant shall pay to the landlord the said yearly and other rents as and when the same shall respectively become payable; and that the tenant shall not underlet, assign, or in any wise part with the possession of the said house, outbuildings, lands and premises, or any part thereof, and that the land tax, and landlord's property tax, and rent charge for tithes, for the said farm lands and premises shall be paid by the landlord, and that all other taxes and rates in respect thereof shall be paid by the tenant during his occupancy of the said farm lands and premises. And that the game in or upon, or to be found in or upon the said lands and premises and all timber, wood, under-wood and trees, in or upon the said lands and premises are to be excepted and

reserved and the same are respectively excepted and reserved to and for the landlord, and that the tenant shall not hunt, shoot, course, take or destroy game, in or upon the said lands, but shall preserve the same for the landlord, and not suffer any person to kill game except the landlord and whom he may authorize. And that the tenant shall give immediate notice to the landlord or the party holding a deputation of the manor of Pickworth, in all cases of trespass on the said lands in respect to game, and concur in all prosecutions or proceedings instituted at the expense of the landlord for the prosecution of trespassers.

And it is hereby agreed that the landlord and his friends and servants, for the purposes herein specified, and for planting, pruning and fencing trees and saplings, and for felling and taking away timber, and for sporting and taking or preserving game, and for viewing the state and condition of the said buildings, lands and premises, are empowered to enter thereon ; and the same buildings, lands and premises, with the hedges, ditches, drains, gates, posts, stiles, walls, soughs and fences belonging thereto the tenant shall keep in good and substantial repair and condition, (except in case of damage by fire or tempest,) and do all needful painting of the wood-work of the said buildings ; and shall and will peaceably deliver up to the landlord in such good and tenantable repair and condition at the expiration of any one year on the 6th day of April, upon six months' previous notice in writing, to that effect, being given under the hand of either the landlord or tenant, or left on the premises for the tenant by the landlord or his agent, subject nevertheless to the stipulations hereinafter mentioned as to delivering up part of the said premises at an earlier period. The landlord will pay for draining tiles in such cases as he may consider requisite, and the tenant upon his quitting is to be repaid for the labour of draining land, from which he shall not subsequently have reaped or taken a crop of corn, hay or grass. The tenant shall preserve and not lop, top or prune any of the trees or saplings ; and shall manage the whole of the said lands in a husbandlike manner, and according to the mode prescribed hereby, or in the said schedules ; and he shall keep the land in cleanly order, and use and spread thereon yearly all the manure arising or made from the pro-

duce thereof, and two-thirds at the least of the land fallowed yearly shall be sown with clover and grass seeds along with the corn sown on such fallowed land, and he shall not grow more than half an acre of potatoes in any year.

And it is hereby agreed that the following additional yearly and other rents shall be paid by the tenant to the landlord in the following cases or events, unless when the same shall happen in pursuance of written leave of the landlord for the specific purpose, such additional yearly rents to be paid quarterly on the aforesaid quarterly days of payment, and the first quarterly payment thereof, and also the payment of any other additional rent, to be made on the first of the said quarterly days of payment after the event on which such yearly or other additional rent is made payable shall happen, that is to say, a yearly rent double the amount of the said yearly rent of £ shall be paid for every year, and so in proportion for less than a year, in case and for so long as possession of the said house, out-buildings, lands and premises is not given up according to a notice to that effect having being duly given by the landlord or tenant; an additional yearly rent of 20*l.* an acre for every acre of grass land which shall be ploughed, dug or broken up, and in the same proportions for fractional parts of an acre; an additional rent at the rate of 5*l.* an acre for any part of the said lands which shall be underlet by the tenant; an additional rent of 5*l.* for every waggon or cart-load or any less separate quantity of hay, fodder, straw, stubble, potatoes, or other root crops, green produce, (except for feeding his horses when on a journey,) or manure, which tenant shall suffer to be taken off the said premises and lands; an additional rent at the rate of 5*l.* an acre for any land that shall be cropped or managed contrary to specification, in this agreement and schedules, for every year in which the same shall be so cropped or managed contrary to such specifications; an additional rent at the rate of 5*l.* for every acre of flax, woad, turnip seed, cole seed, or mustard seed grown upon the said lands, except not exceeding one rood of turnip seed; an additional rent amounting to treble the sum which the landlord shall expend for destroying or preventing the growth of thistles, docks, or other weeds, upon the neglect of the tenant to destroy or prevent the

growth thereof, after receiving a week's notice to that effect in writing, which the landlord is hereby empowered to have done ; and an additional rent of 5*l.* for every neglect to repair the said house and buildings, hedges, ditches, drains, gates, posts, stiles, walls, soughs and fences, after receiving a month's notice in writing from the landlord, in addition to the expenses of any such repairs which the landlord is hereby empowered to have done. Provided always, and it is hereby agreed, that all such additional rents are for and by way of penalties, and that the tenant shall not do any of the matters or acts for which any such additional rent or penalty is made payable without such written leave as aforesaid.

After a notice to quit has been given by the landlord or tenant, the tenant shall not cut or plash any of the hedges except for needful repairs, and shall either undertake in writing to sow such lands with wheat or tares in proper manner as the landlord may wish in the month of October, or the first week in November, or the landlord shall have power and is hereby authorized to enter upon the lands and plough and sow wheat and tares, and to enter upon and have the use of a stable for                    horses ; and after such notice the tenant shall either do the ploughing and such other work, and sowing as the landlord may require, or in case of refusal, the landlord is hereby empowered to enter upon the land and to have such work and sowing done.

The manure made on the said lands and premises belongs to the landlord, is valued at                    , but it is hereby agreed, that upon the quitting of the tenant he shall be paid for a year's manure made from the produce of the last year of his holding, and for all manure and lime he may have purchased and used upon land from which he has not subsequently taken a crop of corn, fodder, grass, or potatoes, and for the carriage thereof, and for all ploughing and other labour on lands summer fallowed in the last year of his holding, which shall not have subsequently produced a crop of any description, provided the lands so fallowed shall have been manured with at least eight cart-loads of good manure made from the produce of the said land, and for all other ploughing or sowing done in due course, and for clover and grass seeds sown with the last crop of corn upon land fallowed, if such clover and grass seeds

shall not have been stocked after the 1st day of November previous to the quitting of the tenant, and also for labour in under-draining done by him on land from which a crop of corn, fodder or grass has not been taken, and for not exceeding ten tons of hay or fodder, and not exceeding ten tons of wheat straw, at the value of each for being consumed on the premises, and for any fixtures, the tenant might legally remove, which belong to him in the house or on the premises, deducting from the amount of valuation the said sum of       ascertained to be the value of a year's manure now on the premises, and also the amount of dilapidations, if any, and of rent due.

And it is hereby agreed that a valuation of the said claims of the tenant, and of dilapidations, if any, shall be made on or before the 25th day of March, previous to his quitting, by a valuer to be appointed by each party, or by an umpire chosen by the valuers before they proceed in the business, to determine any matter whereon they may not agree, and that their or his award in respect to the matters, herein referred to only, shall be binding and conclusive.

Should either the landlord or tenant neglect or refuse to appoint a proper valuer to ascertain the amount due to the tenant, after deducting for manure as aforesaid, and also for dilapidations in respect to the said buildings and land, if any, before the 25th day of March, after a notice to quit has been given, the party so neglecting or refusing shall be precluded from appointing a valuer, and shall be bound by the award of the valuer appointed by the other party.

Provided always, and it is hereby agreed and declared, that if the said yearly or other rents, or any part thereof, shall be behind and unpaid for the space of two calendar months after any or either of the days hereinbefore appointed for the payment thereof, the said John Parkinson, or other the said receiver for the time being, or the said William Amelius Aubrey de Vere, Duke of St. Alban's, or other the person or persons for the time being entitled to the said premises subject to the said tenancy hereby agreed to be created, or any of them, may after a week's written notice requiring payment shall have been given to the tenant or left for him on the said premises, re-enter into the said premises, and have the same as in his or their former right or estate.

And it is hereby further agreed, that a lease shall, at the joint expense of the landlord and tenant, be prepared and executed by the parties hereto, for carrying into full effect the above agreement, and that until such lease shall be executed the rents, agreements, and stipulations hereinbefore agreed upon and therein to be reserved and contained, shall as nearly as circumstances will permit be paid, observed, fulfilled and performed, as if such lease had been actually executed, and particularly that any right of re-entry, which in case such execution had actually taken place, might or could have been enforced by the said John Parkinson, or other the said receiver, or the said William Amelius Aubrey De Vere, Duke of St. Alban's, his heirs or assigns, or any other person or persons whomsoever, shall and may be enforced and exercised if he, they, or any of them shall think fit by declaring this agreement thenceforth null and void, and re-taking the premises accordingly.

Provided lastly, that these presents or anything herein contained shall not operate, or be construed, or taken to operate as a lease or actual demise of the said premises or of any part thereof, or any further or otherwise than as an agreement for a lease.

As witness the hands of the said parties hereto.

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The Schedules herein referred to.

Nos. on Plan.	DESCRIPTION.	Quantities.		
		A.	R.	P.



No. 7.—*Form of Agreement for a Lease, according to the Customs of Northumberland (c).*

Tenant.	<p>MEMORANDUM OF AN AGREEMENT made between Robert Thomas of Meldon, in the county of Northumberland, Esq., of the one part, and John James of Morpeth, in the county of Northumberland, of the other part : whereby the said Robert Thomas, for himself, his heirs, executors, and assigns, hereby agrees to let, and the said John James, for himself, his heirs, and executors, hereby agrees to take, to farm, all that farm of land with the buildings and premises thereto belonging, situated at Hartburn, in the parish of Hartburn and county of Northumberland, now occupied by _____, and containing four hundred acres or thereabouts, at the yearly rent, or sum of 400<i>l.</i> for the term of twelve years, from the 13th day of May, 1850, [or for one year and so from year to year, determinable at the end of the first or any subsequent year, by six months' notice, to expire on the 13th day of May,] and upon the conditions hereinafter written.</p>
Acres.	
Rent.	
Term.	
Penalties.	<p>Together with an additional rent of 20<i>l.</i> for every acre, and so in proportion for a less quantity than an acre, of the old grass land upon the farm, contained in [<i>here state the fields</i>], _____ which shall be ploughed out, or converted into tillage during the term, without consent in writing from the landlord or agent.</p> <p>The additional rent of ten pounds for every acre, and so in proportion for a less quantity than an acre,</p>

(c) Leases are common in Northumberland, but the length of term varies. In the north part of the county, where the farms are large, varying in rental from 400*l.* to between 2000*l.* and 3000*l.* a year, the term is generally twenty-one years. Other farms which are smaller, and require less capital, are let for terms of from three to twelve years, and

upon many estates the tenancies are from year to year under agreement. It will be seen that this agreement prescribes to the farmer his course of husbandry. Before using it as a precedent, its formal provisions should be compared with the first form of agreement and the first form of lease.

of the tillage land upon the farm which shall be managed contrary to the conditions hereinafter written.

The penalty of five pounds for every load of turnips, hay, straw, or manure, that shall be sold or carried from off the premises during the term.

Depastur-  
ing.

And the penalty of two pounds for every stint that shall be depastured upon the farm during the last summer or winter of the term, more than the number that has usually been kept thereon; and for every head of cattle less than the usual number kept in the folds during the said last winter, for the purpose of converting the straw of that preceding the waygoing crop into manure, which shall be left in the fold yards and midden steads for the use of the landlord, or next entering tenant.

Rents pay-  
able.

The said rent of four hundred pounds to be paid by half-yearly payments on the 11th of November and 12th day of May in each year; the first payment to be made on the 11th November next, and the additional rents and penalties above-mentioned to be paid at the rent day next after they or any of them may become due; and if not so paid they are to be considered, and liable to be recovered, as rent, and arrears of rent.

Reserves.

Excepting and reserving, unto the said Robert Thomas, his heirs, executors, assigns, agents and work-people, leave in the most full and free manner to enter upon the lands and premises, to search for and win, cut down and carry away any seams of coal or stones, and all wood and underwood that may be laying within or under, and standing or growing upon the same; and to take from the said farm such pieces of land as he may think proper for the purpose of enclosing and planting, the said Robert Thomas paying for all these liberties such damages as two indifferent persons, one chosen by the landlord and the other by the tenant, or in case they should not agree, then a third person appointed by them, may award.

Reserving also unto Robert Thomas, his heirs, executors, and assigns, the game, water-fowl, and fish

on the farm, with right for him, and any person or persons to whom he may give leave, to fish, hunt, shoot, and sport thereon.

And also leave for his agents and workpeople at all times to enter upon and inspect the state and condition of the farm, and of the buildings and premises attached to it.

Leading in  
crop.

The tenant to lead the away-going crop of the present tenant, and fork the same to the stacks gratis, and in the most full manner fulfil to him or allow the landlord so to fulfil, as the latter may decide, all the conditions which by his lease or otherwise he the said                      may be entitled to.

Taxes.

The tenant to pay all taxes, rates, and assessments whatsoever, parliamentary or parochial, that may come against the farm, during the term, except the landlord's property tax.

Rotation of  
crops (d).

All the tillage upon the farm, containing about 200 acres, to be managed in the four-shift course, one part being annually in fallow, two parts in white corn, and one part in clover, during the term. Two white crops never to be taken in succession. That part coming in course for fallow to be turnips, potatoes, or bare fallow, at the option of the tenant; the whole to be well and properly cleaned and wrought, by being ploughed and harrowed at least four times, and hand-picked, if necessary; the part intended for turnips or potatoes to be covered with at least fifteen two-horse cart-loads of good rotten dung to an acre; and the part made bare fallow covered with at least ten two-horse cart-loads of dung, or compost to an acre, or in lieu thereof        bolls of clot lime or six loads of small lime to an acre. Upon the whole of this portion may be sown such white corn as the tenant chooses; and in the ensuing spring shall sow upon the said corn at least six pounds of good red, and two pounds of white clover seeds, with half of a Winchester bushel of good perennial rye-grass seeds to an acre, which shall

(d) For the clay lands the seven rotation in the customs for North-  
course is usually specified. See the umberland *ante*, p. 82.

lie at least one year, and then be succeeded by a crop of oats; after which the land shall be again fallowed as before. The whole of the tillage land in the farm shall be limed at least once during the term, with bolls of clot lime, or six loads of small to an acre.

Tithe rent-charges.

The rent-charge in lieu of tithes to be paid by the landlord.

Potatoes, &c.

No greater quantity of potatoes shall be grown than shall be consumed upon the farm; and no turnips, hemp, flax, or rape, shall be allowed to stand for a seed crop.

Not to sub-let.

The tenant to live and reside upon the farm, and no part of the premises shall be sub-let during the term without the consent of the landlord.

Old grass lands.

To keep uneaten after the 25th day of March preceding the end of the term, the following old grass fields, viz., [*here mention the fields.*] and none of the grass lands shall be mown for a crop of hay two years in succession.

Grass seeds.

To keep uneaten all the grass seeds upon the lands sown with the crop of corn in the year preceding that in which the term expires; the landlord or succeeding tenant paying for the grass seeds so sown, upon re-entering to the premises, provided a proper bill and receipt be produced for the same.

Repairs.

All the buildings (except main walls and main timbers) with the windows, hinges, snecks, locks, grates, pots, ovens, and other fittings up; hedges, fences, gates, ditches and drains of every description; to be kept and left in good and sufficient repair by the tenant, who shall paint the windows and doors every five years, and shall also annually destroy the moles, scale and dress the meadow ground, and hoe up the thistles and weeds growing upon the farm. And should all or any of the conditions in the clause not be fulfilled within one month after notice to do so has been given to the tenant by the landlord or his agent, the latter may employ workpeople to do the same; the expense whereof shall be recovered from the tenant in the same way as rent, or arrears of rent.

**Buildings.** The tenant to lead, at his own expense, all materials required for new buildings, alterations of buildings, or repairs.

**Insurance.** The tenant to insure upon the dwelling-house at least £                      and upon the buildings at least £                      against fire, and to expend all moneys received upon any such insurance policies in making good damage arising from fire.

**Hedges, &c.** The tenant to clean and scour at least roods of hedges yearly.

The landlord or next entering tenant to have leave to enter upon the said premises after the 1st day of December preceding the end of the term, and sow such clover and grass seeds upon the crop during the ensuing spring as he may think necessary, harrowing and rolling them in so as not to injure the corn; and also to lead out the manure to convenient places of the farm, and plough and work the land falling in course for fallow, and scale and dress the grass upon the farm.

**Repossession.** Should the tenant not pay the rents and fulfil all the conditions before mentioned, or should he become bankrupt or insolvent during the term, this agreement shall be void and of no effect; and the landlord may enter to and take possession of the farm and premises hereby let, and re-let them to whom he may think proper, without let or hinderance from the said John James. But on paying the said rents and performing the said conditions (and not otherwise)

shall quietly and peaceably enjoy and occupy the said premises for the term before mentioned, and

**A waygoing crop.** at the expiry thereof have a waygoing crop from off the land falling in course that year, for corn, according to the system detailed in this agreement: which said crop shall be led into the stackyard, and forked to the stacks by the landlord or next entering tenant, and the straw of which shall belong to the party so doing, and shall be so threshed by the said John James as to supply the cattle of the said landlord or entering tenant regularly with straw. The said John

**Threshing, &c.**

James to be allowed the use of the stackyard, barn, granary, one cottage, and stabling for two horses for his accommodation when threshing and leading away the corn from waygoing crop, until the 12th day of May succeeding the end of the term hereby agreed on.

**Lease.** The tenant, if required, shall execute a lease containing the above conditions and such others as may be agreed on. Such lease to be paid for at the joint and equal expense of the parties.

This agreement not to operate as a present demise. As agreeing to the above conditions, and severally engaging to fulfil them, the parties have hereunto set their hands this 20th day of November, 1849.

R. T.

J. J.

No. 8.—[The following Form is one used upon extensive Estates in Lancashire.]

After the usual commencement, description of premises, reservation of rent, statement of terms, exception of trees and minerals, and reservation of game, the agreement continues:—

The tenant to keep all the houses, buildings, windows, ways, roads, hedges, ditches, drains, bridges, gates, gate-posts, and fences, at all times during the said term, in good repair, and leave them so at the end of the term, (main walls, main timber, and slate of the buildings only excepted,) and the tenant to cart at his own expense all such materials as may be necessary for such repairs of the main walls, main timbers, and slates, during the said term.

The tenant not to plough any of the ancient meadow ground, and in case of doing so to pay 50*l.* as liquidated damages for every acre he shall so plough.

The tenant not to plough any ground not usually ploughed, nor the fields called

The tenant not to take two white straw crops in succession (except the field has been ten years or upwards in grass, when

a second straw crop may be taken), nor in any year to have less arable land in fallow, turnips, or other green crops, properly cleansed and manured, than is equal to half the land sown with white straw crops, and shall not grow white straw, corn, or grain, on more than two fifth parts of the arable land.

All the straw produced upon the farm, and all the turnips and other fallow crops, and all clovers, grasses, and other forage plants, whether green or made into hay, shall be consumed upon the farm, and all the dung arising therefrom shall be applied to the land, which shall be in summer fallow, or fallow crops. But in the last year of this agreement all the dung made from the preceding crops not already applied to the land in terms of this agreement, as well as the dung made from the last crop, shall be left to the landlord free of charge.

On quitting, the tenant to be paid a reasonable sum for ploughing, harrowing, and cleansing all summer fallows made in the preceding summer, and for the carriage of manure and lime spread thereon, and the cost price of the lime, and a year's rent and taxes for such fallows, and the value of the seed and labour, for any crop that may be then growing thereon. On the fields numbered                      on the plan; the cost price and expense of sowing all grass and clover seeds duly sown in the preceding spring, if not eaten or mown by the tenant after the 1st of November. If the tenant sow any wheat after green crop the last year of his tenancy, he will be allowed the price of the seed and labour.

The tenant is to sow all the lands when laid down, to mow or pasture with good clover and other grass seeds, proper for the respective purposes.

The tenant is to pay 10*l.* an acre additional rent for every acre of land which shall be ploughed or laid down contrary to these conditions, which is to be paid and payable on the next rent-day after such breach shall be made.

The tenant is not to commit or suffer any waste, nor to pare or burn any part of the said premises, nor cut down, top, lop, or crop any trees growing thereon, except small hedgewood for the necessary repair of the fences, and that only at proper and seasonable times of the year.

The tenant is to preserve the game and give notice to the

owner or his agent of all persons coming upon the premises for the purpose of destroying the same, and permit his name to be made use of in any actions or prosecutions the owner may think proper to bring against any person or persons sporting or trespassing upon the said premises, on being indemnified against costs.

The tenant is to reside upon the premises, and not to assign or re-let the same or any part thereof, without the consent of the owner in writing.

The tenant is to allow a sufficient part of the dwelling-house and outhouses to the succeeding tenant, for his servants and horses from Candlemas till May-day in the last year of his holding, at the time he shall be laying on his first crop and doing other agricultural work.

In case the tenant dies, becomes bankrupt, or assigns over his effects, the said farm or any interest therein shall not devolve upon executors, administrators, assignees, or assigns, or any other person, without the consent and approbation of the owner first had and obtained in writing, but the interest of the tenant therein is to cease, and the owner may take possession at the end of the then current year.

In case the tenant shall omit, neglect, or refuse to perform all or any of the foregoing conditions or stipulations on his part to be performed, the owner is thereupon to be at liberty to enter and re-let the premises.

In case any dispute shall arise as to the construction of the above conditions, or what is hereinafter contained, then the same to be settled by two persons to be indifferently chosen for the purpose, and if they cannot agree in their opinion they are to choose an umpire to decide the same, as is usual in like cases.

In order to encourage the tenant to cultivate the farm in the highest possible manner as the best means of securing a prosperous occupation of it, the said landlord shall covenant on behalf of himself and his representatives, owners of the farm let to the said tenant, *on condition* of the foregoing covenants having been fulfilled and kept by the said tenant, that in case the said tenant quits the said farm, the said landlord or the incoming tenant will allow to the said tenant for such improvements made on the said farm subsequently to the date



of this memorandum, and within the stated periods before quitting as are contained in the following list; that is to say, so much of the amount of such expense as shall be in the given proportion in each case to such a number of years as the said tenant shall fall short in the occupancy of the said farm after incurring such expense, *it being expressly stipulated that the tenant is to give an account each year* in writing, on or before the 1st of April, of such outlay as he proposes to make, in order to obtain the sanction of the owner or his agent to the proposed expense, *such sanction being necessary in order to claim or be entitled to any allowance* from him, and shall also render an account of such disbursements within each year; such account to be examined and signed by the agent, and to serve as a voucher for the sums to be received by the said tenant; and that non-payment of rent (if the same shall have been demanded and have afterwards remained unpaid for the space of six months) or non-fulfilment of covenants shall forfeit any claim or right to such allowance for improvements.

The proportion of the proposed conditional allowances to be regulated as follows:—

For bones used on the land the allowance to extend to three years. Half the cost price to be allowed after one crop, one third after two crops, and one fourth after three crops.

For guano used on the land the allowance to extend to two years, one third of the cost price to be allowed after one crop, and one sixth after two crops.

For rape dust used on the land the allowance to extend to one year, one third of the cost price to be allowed after one crop.

For linseed cake used for feeding cattle and sheep, one third of the cost price to be allowed for that which has been used since the 1st of October then last, and one sixth of that used during the preceding twelve months. N.B. Cake given to horses no allowance for.

[Usual provisoes that agreement shall not be a lease, &c.]

No. 9.—*Derbyshire Agreement.*

AN AGREEMENT made the       day of       , 18       , between the Most Noble William Spencer Cavendish, Duke of Devonshire, by William Jeffery Lockett, his agent, of the one part, and       of       in the county of Derby, farmer, of the other part, viz.

The said William Spencer, Duke of Devonshire, agrees to let to the said       , who agrees to take and occupy, as tenant to the said Duke, the messuage and other buildings, and the several closes or parcels of land, described in the schedule hereunder written, and other the hereditaments of the said Duke, situate in the township of       in the said county of Derby, now in the occupation of the said       with the appurtenances, (*except and reserved* to the said Duke, his heirs, and assigns, all timber and other trees, plants, and saplings, and all game and fish upon the said premises, with full power for himself and all others authorized by him to enter on the said premises to cut down, convert and carry away the said trees, and pursue and take the said game and fish, in any manner whatever,) to hold the said premises, subject to the reservation aforesaid, from the 25th day of March last past, for one year, and thenceforward, until six months' notice in writing, previous to the 25th day of March, in a subsequent year, shall be given by or on behalf of either of the said parties to the other, signifying an intention to determine this agreement; and subject also to the following proviso, viz. :— Provided always, that if at any time between the 29th day of September, and the 25th day of March, either in the present or any future year, the said       shall depart this life; or shall become bankrupt or a declared insolvent; or shall take or apply for the benefit of any Act for the relief of insolvent debtors; or shall make any assignment of his effects or any part thereof for the benefit of his creditors, either generally or partially; or shall be imprisoned for one month for debt; or shall have any part of his stock and effects upon the said premises attached, seized, or taken in execution, under any writ or legal process, assignment, or bill of sale, or otherwise; then, although no such notice as aforesaid may have been given

by or on the behalf of either of the said parties, this agreement shall cease and determine on the 25th day of March next after any of the said events; and it shall be lawful for the said Duke, his heirs or assigns, to re-enter in such and the like manner as he might have done if such notice as aforesaid had been given; yielding and paying unto the said Duke, his heirs and assigns, the yearly rent of \_\_\_\_\_, in two half-yearly payments, on the 29th day of September and the 25th day of March, beginning on the 29th day of September next.

And the said \_\_\_\_\_, hereby for himself, his executors and administrators, agrees with the said Duke, his heirs and assigns, as follows; viz.—That he will pay the said rent half-yearly as aforesaid—and also pay the land tax and all other taxes, rates, and assessments; that he will keep and leave the said messuage and other buildings, and all the gates, stiles, hedges and fences on the said land in good repair; that he will scour, cleanse, keep and leave open all the soughs, drains, and ditches; that he will not break up any meadow or old pasture ground, nor commit any waste, or do any injury to any part of the said land by excessive or irregular ploughing, cropping, or mowing, or in any other manner; that he will not cut, crop, or injure any trees or saplings on the said premises, nor cut any of the hedges but for the repair and improvement thereof; that he will return to the said land two tons of purchased manure for every ton of hay sold, which had grown thereon; that he will spend, spread, use, and employ in a husbandlike manner upon the said land, where it may be most wanted, all the dung, manure, and compost which shall be made on the said premises; and upon the determination of this agreement, by notice or otherwise as aforesaid, will leave thereon all the unexpended and unemployed muck, dung, manure, and compost; that it shall be lawful for the succeeding tenant of the said premises, at any time after the 1st day of February previous to the 25th day of March on which this agreement may be determined, by notice or otherwise as aforesaid, to enter upon such parts of the said land as shall be in stubble or fallow, to plough and clean the same, and do all other acts which may be necessary for the better growth of the next crops, for which purpose he shall have the use of a sufficient part of the outbuildings; and that upon such notice as afore-



nexed, at the rent, for the time, and subject to the terms, conditions, and stipulations hereafter mentioned, (namely)

2. That the tenancy shall be considered as commencing on the            day of            and that the tenant shall hold for one year, from Old Lady-day, at the rent of £            and so on, from year to year, determinable at the end of the first or any subsequent year, until six months' notice shall be given, by either party, to quit at the end of a year.

3. The landlord to have power at all times, by himself, his servants, and friends, to enter upon the premises for the purpose of sporting, doing as little damage as may be.

4. The landlord to have power at all seasonable times, by himself and persons authorized by him, to enter upon the premises for the purpose of felling and carrying away timber-wood and trees, and for planting in nooks and corners, and for all reasonable purposes, doing as little damage as may be.

5. And it is also agreed by the parties signing this agreement, that, after notice to quit possession be given by either party, the last half-year's rent shall be considered due, and payable upon the first day of November then next ensuing such notice; and that the rent of five pounds for each and every day, shall be paid during the time the premises herein agreed for shall be held over, and the landlord kept out of possession, after the time mentioned and required in and by such notice.

6. The tenant shall pay the rent quarterly, that is, on the sixth day of July, the sixth day of October, the sixth day of January, and the sixth day of April in every year as it becomes due, and shall pay all taxes, rates, and charges whatsoever, parliamentary and parochial, upon the said lands and premises, except

7. The tenant to do all repairs, and the carriage of all materials for repairs; and to keep and leave all the fences, gates, and stiles in good and complete repair; and the ditches and water-courses properly cleansed and scoured at all times, and so to leave the premises upon quitting them; but if the premises be not put in sufficient repair within two months before quitting, then the landlord is to be at liberty to direct such repairs to be done at the tenant's expense, and the expense

shall be added to the rent, and recoverable by distress as for rent in arrear.

8. The tenant shall leave upon the premises all buildings whatsoever, now erected or hereafter to be erected thereon, in good and tenantable repair, without any allowance for such as he may have built.

9. The tenant shall not sow any woad, line, or mustard seed, or let any clover, cole, or turnips stand for a crop of seed, without paying an additional rent of twenty pounds for every acre so cropped, and so on in proportion for a greater or less quantity than an acre.

10. The tenant not to break up, or convert into tillage, any meadow or pasture land without paying an additional rent of twenty pounds per acre, for every acre so broken or ploughed up; nor to meadow any land that is here described as pasture, without paying an additional rent of five pounds for every acre so meadowed. Clover meadow to be mown only once in a season. All lands that have been laid down to grass for more than three years to be considered as pasture or meadow land under this clause.

11. The tenant shall manage the arable land in a good and husbandlike manner:—(viz.) *The Heath Land* to be managed on the four-field course of husbandry, one fourth part to be well and regularly fallowed for turnips, and to lay on every acre so fallowed not less than ten bushels of good drilled bones or other artificial manure of equal value thereto, not to have more than two fourth parts in corn or grain, and not less than one fourth part in grass seeds to be sown on the first crop of corn after a fallow. *The Fen Land* to be managed on the five-field course of husbandry, one fifth part to be well and regularly fallowed for turnips or cole, not more than three fifths in corn, and one fifth in seeds to be sown on the first crop of corn after a fallow in every year, and to use the same quantity of bones or other artificial manure per acre as on the cliff land: and that the tenant shall not deviate from this course of management without permission in writing from the landlord or his agent to the contrary.

12. The tenant shall not sell, but shall inbarn, stack, and lay upon the premises, and not elsewhere, all the hay, straw, and other produce thereof, or that may be brought thereon,

and all the dung and manure arising therefrom, or brought thereon, to carry out and spread upon such parts of the premises as most require it.

13. The dung and manure arising from the crop of the last year, or any other that may be brought thereon, which may not have been carried out at the time of quitting, to be left in the farm-yards, or where else the same may be, for the landlord's use, for which no recompense is to be claimed by the tenant.

14. The tenant shall not cut down, grub up, lop, top, or prune any timber, or any other tree, or such as are likely to become timber, nor lop any pollard tree, nor cut or plash any hedge, without leave in writing; shall guard all the hedges when plashed, and scour the ditches, in a husbandlike manner, leaving the ditch                      wide at the bottom, and                      feet deep, with a slope of not less than                      to every foot in depth.

15. And the said                      agrees that the said landlord, or the succeeding tenant, may enter upon such part of the arable lands and grounds, in turn to be fallowed on the said farm, on the twentieth day of November; and such part of the lands as are in turn to be sown with spring corn on the twentieth day of March next, (or as soon after as he the incoming tenant may think proper,) after the said                      shall have given or received notice to quit the said farm, without paying anything for the same. And that he shall not set, let, or assign the said premises or any part thereof, without the consent of the landlord or his agent in writing, under penalty of five pounds per acre for every acre so underlet: or sell or dispose of the grass, seeds, or other keeping, or any part thereof: nor take in any agistment stock, except sheep to turnips, without leave in writing from the landlord or his agent.

16. The tenant to sow wheat on all land in due and proper course to be sown with wheat the autumn preceding the expiration of his tenancy, according to the direction of the landlord or his agent.

17. The tenant shall be allowed the cost price for all small seeds sown the spring preceding that in which he shall quit, and one shilling per acre for sowing and harrowing the same, but the tenant shall not stock the same after the tenth day of October previous to quitting the said premises.

19. The tenant shall paint all wood-work in and about the house and buildings with two coats of good paint every three years.

20. The tenant shall mow all thistles twice in every year, viz., in June and August.

21. The tenant to expend \_\_\_\_\_ yearly in under-draining such parts of the said premises as most require it, of which a proper account shall be delivered to the said \_\_\_\_\_ or his agent, upon or before the twentieth day of March in every year.—And in case the said sum shall not have been expended to the satisfaction of the said \_\_\_\_\_ or his agent, the same shall be paid as an increase of rent, and recoverable by distress as for rent in arrear.

22. The tenant to be allowed for the following or way-going crop of corn, according to the custom of the estate, but for no bones or artificial manure used for the benefit of the said crop, viz.—from the high-field *ancient* arable land, as described in the schedule hereof, which crop shall be sown by the outgoing tenant, and sold to the incoming tenant or the landlord, at a fair valuation in the usual way of arbitration, to be estimated within one month of the corn being fit for cutting, such crop being sown upon that land only which shall have been fallowed the preceding year; the incoming tenant being allowed to sow his small seeds, at the spring of the year, on the same land, and the said crop shall be deemed



and taken as a security for the payment of last half-year's rent, if the same shall be proved to be of sufficient value to pay the same, or so much of the said rent or proportion of rent as it may amount to.

23. And it is hereby declared and agreed by and between the parties hereto, that the several matters hereinbefore particularly mentioned and specified as subjects of valuation and allowance to the out-going tenant, shall be the only matters in which such valuers and arbitrators shall have power or authority to enter into; without the special agreement and directions in writing of the parties to the reference, any law, custom, or usage to the contrary notwithstanding.

24. As witness the hands of the parties to this agreement.

(Signatures.)

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Schedule.

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No. 11.—[I have been favoured by the Earl of Yarborough with the following two forms of agreement, which are proposed for adoption upon his lordship's estates, and have been subjected to very careful revision.]

MEMORANDUM OF AGREEMENT, made the 20th day of June, 1849, between the Right Honourable Charles Anderson Wortley, Earl of Yarborough, by George Monier Williams, of Brocklesby, in the county of Lincoln, his agent, of the one part; and Charles Marris, of Croxton, in the county of Lincoln, farmer, of the other part.

It is hereby agreed, that the said Earl, his heirs or assigns (who are hereinafter described as the landlord) shall at the request and expense of the said Charles Marris, his executors, administrators, or assigns (who are herein-

1. after described as the tenant), grant to the tenant an indenture of lease of all that messuage or farm-house, with the cottages, buildings, yards and gardens, and lands thereto adjoining or belonging, or now occupied therewith, situate at Croxton aforesaid, and at Melton Ross, and Immingham, both in the county of Lincoln, containing 832 acres, and 37 perches (more or less), with the appurtenances, as the same are now in the occupation of the tenant, as tenant thereof to the landlord (all of which premises, with the appurtenances, are hereinafter described as the farm), for the term of one year, from the sixth day of April last, as regards the arable and meadow land, and the pasture land at Immingham; and from the 13th day of May last, as regards the other pasture land, and the messuage or farm-house, and the cottages, buildings, yards, and gardens appurtenant to the said messuage or farm-house; and so on from year to year, determinable at the end of the first or any subsequent year, on six calendar months' notice in writing given by either the landlord or tenant to the other for that purpose, at the yearly rent of payable half-yearly, in equal parts, on the eleventh day of October, and the sixth day of April in every year, without deduction, except in respect of land tax and landlord's property tax; the first half-yearly payment thereof to be made on the eleventh day of October next after the said sixth day of April, and the last half-yearly payment thereof (however the tenancy may be determined) to be made in advance on the first day of January next preceding the day or days on which the tenancy is determined or agreed to be determined. And that the said indenture shall contain a clause of re-entry on nonpayment of the said rent, or nonperformance by the tenant of any covenant therein; and also covenants by the tenant to pay the said rent in manner aforesaid, to keep and leave the said messuage or farm-house, and the cottages, buildings, and fences in good and tenantable repair and condition; to manage and cultivate the land in a good and husbandlike manner during the tenancy; not to sell, or give away, or remove, or allow
3. to be removed off the farm any of the hay, straw, or fodder the produce of the said lands, without the previous consent

- in writing of the landlord or his agent, and not to assign or underlet or part with the possession of the farm or any part thereof, (except the cottages now or hereafter to be erected on the farm, with the gardens attached to them,)
4. without such previous consent in writing; and also a covenant by the landlord for peaceable enjoyment; and also covenants by the landlord and by the tenant respectively, that the several regulations contained in the schedule hereto shall be fulfilled by the landlord *or the incoming tenant* and the tenant respectively, with respect to the farm whilst the same or any part thereof shall hereafter be
  5. in the occupation of the tenant and also *with respect to any other lands or hereditaments which the tenant may hereafter occupy* under the landlord, in addition to, or instead of, the farm or any part thereof; and that if the said covenants or any part thereof have not been fulfilled by the said Charles Marris during the time the farm was in his occupation before the making of this agreement, such non-fulfilment shall be deemed and considered as the non-fulfilment by him of the covenants in that behalf to be contained in the said indenture, so far as the same relate to such non-fulfilment by him; and that all and every of such covenants and regulations as can or may be fulfilled by, or be binding upon, the landlord and the incoming tenant, and the tenant, or by or upon either of them in respect of the said farm, when the same or any part thereof was in the occupation of the tenant, before the making of this agreement, shall be fulfilled by, and be binding upon them and each of them accordingly, any usage, custom, claim or demand, matter or thing to the contrary notwithstanding: and also a proviso that if the tenant shall occupy under the landlord any other land or hereditaments in addition to, or instead of, part or parts of the farm, or shall occupy part only of the farm, such changes in the occupation of the farm shall not invalidate the said indenture; but all the terms thereof applicable to such other land or hereditaments shall be binding on the landlord or incoming tenant and the tenant respectively, in respect of the residue of the farm and such other lands and hereditaments respectively: and also a

proviso that nothing in the said schedule contained shall alter the duration and determination of the term to be granted to the tenant by the said indenture, except in respect of such parts of the farm as may be required to be given up to the landlord or incoming tenant within the twelve calendar months before the end of the tenancy, and that notwithstanding such giving up of such parts of the said farm, the said indenture shall not be thereby invalidated; and also all other usual and reasonable covenants, provisoes, and conditions. And it is hereby further agreed, that if, before the grant of the said indenture, and after the making of the said agreement, the tenant shall occupy the farm or any part thereof, the tenant shall hold the same on the terms to be contained in the said indenture; and that until the grant of the said indenture, the landlord may distrain for all or any part of the rent to be reserved by the said indenture as if the same indenture had been granted: but that this agreement is an agreement only, and not a demise of the farm or any part thereof; and also that the tenant shall at his expense, make and deliver to the landlord a counterpart of the said indenture, when the landlord grants to the said tenant the said indenture.

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THE SCHEDULE BEFORE REFERRED TO.

*The Regulations relating to the Farm.*

I.

*Regulations relating to the Farm on the Determination of the Tenancy.*

1. In the autumn before the tenancy ends the tenant shall sow wheat at the proper time on all the land in due and proper course to be sown with wheat.
2. The tenant shall plough and work the said in turn to be fallowed in the year following the end of the tenancy, provided he shall do the work at such times and in such

manner as shall be satisfactory to the landlord or the incoming tenant, and shall be paid by the landlord or the incoming tenant for so doing; but if the landlord or the incoming tenant shall be dissatisfied with the manner in which, or the time at which, the work is being done, the tenant shall, on being required so to do by the landlord or the incoming tenant, deliver to either of them possession of, and permit him to enter and remain upon, all the land to be fallowed.

3. When the tenant is not entitled to a following or waygoing crop, he shall, on the first day of February before the end of the tenancy, deliver to the landlord or to the incoming tenant possession of, and permit him to enter and remain upon, all the arable land of the farm, except the land in seeds standing for a second summer in due course according to the usual cultivation of the farm, and except half the turnip land; but the tenant shall not have any claim for eatage in respect of any of the land of the farm delivered up before the expiration of the tenancy.
4. When the tenant is not entitled to a following or waygoing crop, he shall, on the fifth day of March before the end of the tenancy, deliver to the landlord or to the incoming tenant, possession of, and permit him to enter upon, two thirds of the turnip land above excepted, and shall deliver possession of the remainder of the turnip land on the sixth day of April following; but the tenant shall not have any claim for eatage in respect of any of the land of the farm delivered up before the end of the tenancy.
5. When the tenant is entitled to a following or waygoing crop, he shall, on the first day of February before the end of the tenancy, deliver to the landlord or to the incoming tenant possession of, or permit him to enter and remain upon, the whole of the arable land of the farm, except the land whereon such crop is sown or intended to be sown, and except the land in seeds standing for a second summer in due course according to the usual cultivation of the farm; but the landlord or the incoming tenant may enter and remain on that part of the land reserved for such

following or waygoing crop which shall in due course be to be sown with grass or clover seeds for the purpose of sowing such seeds and of covering them in the usual way.

6. When the farm is subject to a following or waygoing crop, the tenant shall choose from such of the land of the farm as shall then be in due course for such sorts of corn as he may be entitled to make for such crop, and which shall not have been broken up from old grass within the ten years next preceding, and from no other; the land on which such following or waygoing crop is to be sown, and the number of acres to be so chosen by the tenant shall include the fences and the ordinary waste at the sides of the selected fields, except regular roads, and shall not be estimated merely by the number of acres actually sown with corn; and the land so chosen shall not include parts of fields, unless when it is necessary to divide a field for the purpose of making up the number of acres required for such following or waygoing crop.
7. While the following or waygoing crop is standing uncut the landlord or the incoming tenant shall purchase the same, and the same shall be sold by the tenant, at a valuation, and in making such valuation, no allowance shall be made for the value of any manure that might arise from the straw of such crop. The estimate of the number of bushels per acre contained in such crop, shall be made before such crop is begun to be cut, but the price per bushel at which the several sorts of corn contained in such crop shall be valued, shall be the average price at which such several sorts of corn shall be sold in the market of Brigg during the six calendar months ending the first day of April next after the expiration of the tenancy. Such a sum of money as the valuer, arbitrators or arbitrator, or umpire may consider equal to one half of the probable amount of the whole purchase-money of the said crop shall be paid to the tenant on or before the twenty-fifth day of December following the making of such estimate, and the balance of such valuation, when completed, shall be paid on the sixth day of April following.
8. When possession of part of the arable land is to be delivered to the landlord or to the incoming tenant as afore-

said on the first day of February in any year, the tenant shall, before or on that day, provide in and upon the farm, for the use of the landlord or incoming tenant, from that day until the thirteenth day of May following, good and sufficient stable-room and all other proper accommodation for one pair of horses for every one hundred acres of arable land given up on or before the said first day of February, without any allowance to the tenant in respect thereof, and on the said first day of February, shall, for the use of the landlord or the incoming tenant, leave properly stacked in the stackyard, five tons of wheat straw, and one ton of hay or seeds, in respect of each of the said pairs of horses, the value of such straw, hay, and seeds to be estimated at what they are worth for consumption on the farm, and to be paid for by the landlord or incoming tenant on a valuation to be made as hereinafter provided, and the tenant shall permit the landlord and incoming tenant and their agents, to do all things necessary for carrying this eighth rule fully into effect.

9. At the end of the tenancy, the tenant shall be paid by the landlord or the incoming tenant the value of all the manure made in the foldyards, stables, or buildings of the farm from the produce thereof in the preceding year, and left by the tenant for the use of the landlord or the incoming tenant, the cost of one third of the oil cake and one fourth of the linseed used in making such manure being first deducted from such value, but the tenant shall not remove such manure from the farm or dispose of it to any other person than the landlord or the incoming tenant.
10. All straw and fodder beyond the quantity herein by the eighth rule reserved for the landlord or incoming tenant, not consumed at the expiration of the tenancy, shall be left on the premises without any allowance for the same, beyond the value of the manure that may arise from the hay and clover, and from any quantity of wheat straw so left, not exceeding one fifth part of the whole grown in the last year; but the tenant shall not have any allowance for the manure which may arise from any portion of the said hay, clover, or wheat straw which may have been purchased by the incoming tenant.

11. At the end of the tenancy, an estimate of the cost of putting into repair and into good tenantable condition all these buildings, gates, fences, ditches, drains, and other things on the farm, to the repair or maintenance of which the tenant is liable, and then being out of repair and not in good tenantable condition shall be made, and the amount of such estimate shall be deducted from any sums to be due to the tenant at the end of such tenancy, or at option of the landlord, shall be paid to him by the tenant on request.
12. At the end of the tenancy, an estimate of all sums due from the tenant to the landlord, for arrears of rents or otherwise in any respect, and a valuation of the damage sustained by the landlord or incoming tenant by the non-fulfilment by the tenant of the terms herein mentioned, shall be made, and the amount of such estimate and of the valuation at which such damage is so valued shall be deducted from any sums to be due to the tenant at the end of such tenancy, or at the option of the landlord shall be paid to him by the tenant on request.

## II.

*Scale of Allowances to be made by the Landlord to the Tenant at the End of the Tenancy, in respect of Improvements of the Farm made by the Tenant, as well during his Tenancy as during the Time he has occupied the Farm before the making of this Agreement.*

1. *For Draining.*—When the landlord has found tiles, and the tenant has done the labour, if done within twelve calendar months before the end of the tenancy, and no crop has been taken from land after the draining thereof is completed, the whole cost to be allowed. If one crop has been taken from such land, three fourths of the cost to be allowed, and so on, diminishing the allowance by one fourth for each crop taken; but this allowance to be made only when the work is well and properly done by the tenant to the satisfaction of the landlord, or his agent, expressed in writing.



2. *For Marling or Chalking*.—If done within twelve calendar months before the end of the tenancy, the whole cost to be allowed; for that done in the previous year, seven eighths of the cost to be allowed, and so on, diminishing the allowance by one eighth for each year that shall have elapsed since the marling or chalking.
3. *For Lime* used within twelve months before the end of the tenancy, if no crop has been taken from the land limed in that year, the whole cost including labour to be allowed. If one crop has been taken from such land, four fifths of such cost to be allowed, and so on, diminishing the allowance by one fifth for each crop taken from such land.
4. *For Clayng* on light land, a similar allowance to that for lime under rule 3.
5. *For Bones* used within twelve calendar months before the end of the tenancy, two thirds of the cost if used dry, and one half if dissolved in acid, to be allowed; and for those used in the previous year, one third of the cost if used dry, and one fourth if dissolved in acid, to be allowed.
6. *For Guano and Rape Dust* used within twelve calendar months before the end of the tenancy, for turnips or other green crop, two-thirds of the cost to be allowed.
7. *For Oil-cake* given to cattle and sheep, one third of the cost price of that so used within twelve calendar months before the end of the tenancy, and one sixth part of the cost price of that so used in the previous year, to be allowed.
8. *For Linseed* given to cattle and sheep, one fourth of the cost price of that so used within twelve calendar months before the end of the tenancy, and one eighth of that so used in the previous year of the tenancy, to be allowed.
9. *For Ashes or Town Manure* purchased and used for the turnip or rape crop sown within twelve calendar months before the end of the tenancy, one-half of the cost price to be allowed.
10. The word "crop" used in this and the preceding rules relating to the said allowances includes turnips, rape, or any other marketable produce of the land, as well as corn. When the tenant is entitled to a following or waygoing crop, such crop, or the year in which it is reaped, shall be

taken into account in ascertaining the claims of the outgoing tenant to the foregoing allowances in respect of the land upon which such crop is grown.

11. At the end of the tenancy, the tenant shall be paid by the landlord or incoming tenant the value of leading out manure and other labour done, with the approbation of and for the sole use of the landlord or the incoming tenant, and the cost of all seed and of the labour of once ploughing and of harrowing and sowing the land then sown with wheat in due course after seeds or clover, or after any other crop when such wheat follows in due course, according to the regular practice on the farm sanctioned by the landlord, and the value of all labour properly bestowed on clay land summer fallowed (when such land has been worked in a good and husbandlike manner, but not otherwise), and of the seed and labour of sowing such clay land, and also the cost price of and the labour of sowing all grass and clover seeds sown within twelve calendar months before the end of the tenancy; but the tenant shall not stock the land sown with grass or clover seeds after the 1st day of November preceding the end of the tenancy, nor shall he stock the land so sown with any other animals than sheep, or pigs properly ringed.

### III.

#### *Regulations for Valuing the Claims and Allowances of the Landlord and the Tenant.*

1. The valuation of the amount of all the claims and demands of the landlord and incoming tenant, and of the tenant respectively, in respect of the farm or any part thereof, under the terms of the tenancy, and the valuation of any following or waygoing crop, shall be ascertained and made by a valuer, or by two arbitrators, or one arbitrator, or an umpire (to be appointed as hereinafter mentioned), who shall make such valuation after a personal inspection of the farm and of the parts thereof to which such claims and demands relate, and after a full examination of the evidence for and against such claims and demands.
2. Such valuer shall be appointed on or before the first day

of March in the year in which the tenancy ends by the tenant and by the landlord, or the incoming tenant on his behalf, jointly, or if no such appointment is made on the said first day of March, the landlord, or the incoming tenant on his behalf, shall appoint an arbitrator, and the tenant another arbitrator, on or before the eighth day of the same March, and the said arbitrators shall on or before the thirteenth day of the same March appoint an umpire, and in case either party shall neglect or omit to appoint an arbitrator on or before the said eighth day of March, the arbitrator appointed by the other party shall act alone, and in case no appointment of an umpire is made by the arbitrators, on or before the said thirteenth of March, the landlord or his agent shall on or before the twenty-fifth day of the same March appoint an umpire. The valuation and award of such valuer, or of such arbitrators or arbitrator, shall be made on or before the thirteenth day of May following: provided, that with reference to the valuation of any following or waygoing crop, the appointment of valuer shall be made at any time before, or on, the first day of July next after the end of the same July, or by the landlord or his agent, before or on the twenty-fifth day of the same July, and the award of such last-mentioned valuer, arbitrators or arbitrator, shall be made on or before the third day of April following, and of such last-mentioned umpire, after the third and before the fifth day of the same April; and each of such several appointments, valuations, and awards shall be conclusively binding on all parties.

3. Any such valuer, arbitrators or arbitrator, or umpire, shall have power to arbitrate and award on those matters only which are hereinbefore particularly mentioned as subjects for valuation, and on no other matters, claims, or demands whatsoever, unless by a special agreement in writing under the hands of the landlord or his agent, or the incoming tenant, and the tenant, any law, usage, or custom to the contrary notwithstanding.

The tenant shall not have any claim or demand upon the landlord or the incoming tenant, except in respect of the matters hereinbefore particularly mentioned, unless by a



The said                        hereby agrees that he will pay the said rent according to the reservations and terms aforesaid, and also all rates, taxes, and assessments which may be assessed and charged upon the said premises, (except the Land Tax, Tithe Commutation Rent Charge, and Landlord's Property Tax).

Also that he will keep the buildings insured to the value of £ .

Also that he will manage and cultivate the land in a good and husbandlike manner during his tenancy, not having more than one-half of the arable land sown with corn or pulse in any year, without the consent in writing of the said landlord or his agent.

Also that he will at his own expense and charges maintain and keep the said messuage or farmhouse, buildings and cottages, and all the gates, hurdles, fences, ditches, and watercourses, in good and tenantable repair and condition, including the finding all materials, and will leave the same in such repair and condition when he shall quit and give up possession thereof. Provided always that until the said buildings, gates, and hurdles are put into perfect repair by the landlord, he, the said landlord, shall provide sufficient rough timber, bricks, stones, tiles, and lime, but no other materials, for such repairs as may be necessary ; and provided also that in case of storms, tempests, or other inevitable accidents of the like nature, the landlord shall repair and rebuild at his own expense, the tenant carting all materials gratis.

Also that he will in each year of his tenancy find, and lead loads of good dry wheat straw, to A—, or other parts of the estate, where he may be directed by the landlord or his agent, without any allowance being made for the same.

Also, that he will cart, gratis, from the town of N—, every year        tons of coals, and deliver the same at A—.

Also, that he will not break up and convert into tillage any meadow or pasture-land that has been laid down in grass more than seven years, without the consent in writing of the landlord or his agent.

Also, that he will not lop, top, cut down, or grub up any timber or timberlike trees, now or hereafter to be growing

upon the said farm, and will let up and preserve all young trees and flitterns thereon.

Also, that he will not allow more than an acre of cole or turnips to stand for a crop of seed.

Also, that he will not sell any manure that may be made or brought upon the premises, but shall spend the same in a husbandlike manner, upon the lands demised, or some part thereof.

Also, that he will not underlet any part of the premises, (excepting cottages and gardens to labourers,) without the consent in writing of the landlord or his agent.

Also, that he will not sell more than                    tons of the hay, clover, or sainfoin, nor more than                    loads of the straw grown in any year. And that he will expend the money arising from such sales in the purchase of oil cake or other artificial food, or in bones, guano, or other artificial manures to be consumed and used on the farm, and that he will consume the remaining part of the hay, straw, and other fodder upon the said farm. And shall at each half-yearly audit deliver to the landlord or his agent a true account of such sales, and also of the artificial food or manure purchased with the proceeds thereof.

Also, that he will not sell any hay, straw, or other fodder after notice to quit shall be given by either party, excepting to the incoming tenant.

Also, that he will, in the last year of his tenancy, leave one-fourth part at the least of the arable lands not sown with sainfoin, for a turnip or green crop, and give up to the incoming tenant one half of such land on the 1st of December, and the remaining half on the 1st of February before quitting. And also shall leave one other fourth part of the arable land for wheat, and shall allow the incoming tenant to enter upon one moiety thereof, on the 1st day of September before quitting. And shall also, on the 6th day of April, in such last year, if required, give up to the incoming tenant, possession of one half of the stabling, and one-third of the cart houses, and shall also provide good and sufficient lodging for one servant of the said incoming tenant.

Also, that he will, in the last year of his tenancy, permit the landlord or his incoming tenant to sow, among the corn sown

the spring previous to quitting, such grass or clover seeds as he shall think proper; and will also permit him to brush, harrow, and roll the same in the usual and husbandmanlike manner.

Also, that he will not cut or injure the produce of such grass or clover seeds after the corn is cut, nor feed or depasture the same with any cattle except pigs properly ringed.

And it is further agreed between the said parties, that the said tenant shall be allowed to have the use of the rick yards and the granary for the purpose of storing his corn and grain, until the 1st day of May after the expiration of the tenancy; and that the incoming tenant shall thresh out, dress, and deliver the corn grown during the last year of the tenancy before the said 1st of May, at such time as he shall think proper, he taking the straw and other fodder for his own use without any payment, as a remuneration for such thrashing, dressing and delivering.

Also, that the incoming tenant shall take the hay grown during the last year of his tenancy at a spending price, to be fixed by the arbitrators or their umpire, to be appointed as hereinafter mentioned.

And the said Earl of Yarborough hereby agrees with the said , his executors, administrators, and assigns, that on the determination of the tenancy hereby created, he or his incoming tenant will pay and allow to the said for permanent improvements made, and for artificial manures used on the said farm, after the date thereof, such sum of money as shall be awarded by valuation, according to the rules and principles following:—

For underdraining, the landlord finding tiles, and the tenant finding all labour during the last year of the tenancy, the whole of the value of the labour. For draining during the last year but one, three-fourths of the value of the labour, and so on, diminishing by one-fourth for each year that shall have elapsed from the date of the work to the period of quitting the farm.

For underdraining, the tenant finding tiles and all expenses, the allowance to extend over twelve years. For marling or chalking, the allowance to extend over ten years.

For lime, the allowance to extend over four years. For bones, the allowance to extend over four years.

In each case the allowance to be calculated on the same principle as underdraining, viz., diminishing annually in proportion to the period of expenditure.

For guano, where one crop only has been taken after it, one-half the cost.

For linseed cake, used for feeding cattle or sheep on the land, the allowance to be one-third of the cost of that used in the last year, and one-sixth of the cost of that used in the year previous to the last one of the tenancy.

But no allowance is to be made for any artificial food or manure purchased with the produce of the straw and hay hereinbefore authorized to be sold.

Provided always that as regards draining and marling the work shall have been done with the sanction of the landlord or his agent in writing, and completed in a good workmanlike manner.

And it is lastly agreed, by and between the said parties hereto, that proof of the expenditure being made to the satisfaction of the arbitrators, the several allowances as aforesaid shall be ascertained and fixed by two disinterested persons, one to be chosen by the outgoing tenant and the other by the landlord or his incoming tenant, or in case of their disagreement, by a third person, to be appointed by the arbitrators, before they begin to act, and that from such allowances shall be deducted such sums (if any) as the said arbitrators or umpire shall think reasonable and proper for dilapidations or non-repair of buildings, fences, gates, hurdles, or watercourses.

In witness whereof the said parties to these presents have hereunto set their hands this day and year first above written.

The Schedule hereinbefore referred to.

No. of Fields.	Number on Tithe Commutation Survey.	Names of Fields.	State.	Quantity.



No. 13.—[The following very stringent agreement is in use in Cheshire. It will, however, be observed that it does not avert the operation of the custom of the country. It is a good security for a landlord against a bad tenant, but cannot be considered as any security to a tenant.]

<p>Agreement to let.</p> <p>Description of farm.</p> <p>Excepting timber mines, &amp;c.</p> <p>With power to carry away the same, and to make bricks on the premises.</p> <p>Reserving</p>	<p>MEMORANDUM OF AN AGREEMENT made and entered into this                      day of                      one thousand eight hundred and                      between E. D. of C. in the county of Chester, esquire, of the one part, and R. P. of S. in the said county of Chester, farmer, of the other part: whereby in consideration of the yearly and other rents hereinafter agreed to be paid, and the several conditions, stipulations, and agreements hereinafter contained, and on the part and behalf of the said R. P. agreed to be observed and performed, he the said E. D. doth promise and agree to and with the said R. P. to demise, set, and to farm let, unto him the said R. P. all that messuage and farm, or tenement, with the outbuildings, fields, pieces of land or ground, hereditaments, and appurtenances thereunto belonging, situate, lying, and being in S. in the said county of Chester, containing in statute measure the several quantities, and known by the several names mentioned and expressed in the schedule or particular thereof hereinafter contained, or thereabouts, be the same more or less; excepting and reserving unto the said E. D., his heirs and assigns, all timber and other trees, including fruit trees and shrubs of every description, woods and underwoods, mines, minerals, quarries, peat moss, clay, marl, sand, stone, and gravel, growing or being, or which hereafter shall be planted or grow, or be on the said premises, with full power for him and them, and his and their servants and workmen, to fell, cut down, sink for, search for, get, take, and carry away the same, and to make bricks or tiles on the said premises, allowing reasonable compensation for the damage to be thereby occasioned. And likewise reserving power unto the said E. D., his heirs and assigns, to erect buildings</p>
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power to  
make roads,  
&c., and to  
plant trees.

Excepting  
game, &c.

Habendum  
the premises  
from the 1st  
December,  
2nd February,  
and 1st  
May.

Rent 70*l*.

Payable  
24th June.

Agreement  
by tenant as  
follows:

To pay rent.

and make roads, canals, railways, or drains; and also to plant trees in the hedge-rows, and also in or upon any other part of the said premises, and to fence out the same, an abatement being made in the annual rent hereinafter reserved, for the lands so taken for any of the purposes aforesaid, such abatement to be fixed, in case of disagreement between the parties hereto, by two indifferent persons, one to be appointed by each of the said parties, or if such indifferent persons differ as to the amount of the abatement, then the same to be fixed by an umpire, to be chosen by such two persons. And also excepting all game, wild fowl, and fish, with liberty for the said E. D., his heirs and assigns, friends, gamekeepers, and others, by him or them authorized, to hunt, course, fish, and sport upon any part of the said premises. To hold the said premises hereby agreed to be let (except as aforesaid) unto the said R. P. in manner following, that is to say, the meadow land from the first day of December last, and all the other lands, except the usual outlet for cattle, from the 2nd day of February last, and the said messuage and outbuildings, with the said outlet, from the 12th day of May last, for the term of one whole year thence respectively next ensuing, and afterwards from year to year so long as the parties shall agree, at and under the clear yearly rent or sum of 70*l*., to be paid without any deduction or abatement whatsoever, by one entire payment, on the 24th day of June in each year, as and for and in the nature of a forehand rent, the first payment thereof to begin and be made on the 24th day of June next, and also at and under the several increased rents or penalties hereinafter reserved or mentioned. And the said R. P. doth hereby for himself, his heirs, executors, and administrators, promise and agree to and with the said E. D., his heirs and assigns, in manner following, that is to say, To pay the said rent of 70*l*., at the time hereinbefore appointed, and also the increased rents or penalties hereinafter mentioned, in case any shall become due.

To pay  
taxes, &c.

To pay the land tax and all parochial and other rates, taxes, tithe rent-charges, charges, and assessments which at any time during the continuance of this agreement shall be charged upon the said premises.

To keep a  
dog.

To keep in good condition one dog for the said E. D.

To preserve  
game.

To do his utmost to preserve all game (except rabbits, which the said R. P. shall destroy by such ways and means only as shall be directed by the said E. D.) and all wild fowl and fish on the said premises, for the use of the said E. D., his heirs and assigns, and to warn off and prosecute all trespassers who shall come on the said lands, without his or their consent.

Not to take  
servants of  
bad character.

Not to take into service any person of bad or immoral character.

To do one  
day's team  
work.

To do one day's carriage with a team of horses, waggon and man, in every year during the continuance of this agreement, for the use of the said E. D., his heirs and assigns, if required by him or them, and at such times as he or they shall think proper.

To insure  
the build-  
ings.

To insure the said messuage and outbuildings in the sum of 300*l.*, and the farming stock in the sum of 150*l.* in the Royal Exchange Insurance Office, against loss or damage by fire, and to produce receipts for the annual premiums paid on the policies of insurance, to the said E. D., his heirs or assigns, on settling each year's rent, or in default thereof, it shall be lawful for the said E. D., his heirs or assigns, to insure, and the annual premiums paid by him or them to be recoverable as rent in arrear.

To repair.

To maintain and keep at his own cost and charges, at all times during the continuance of this agreement, and leave, at the expiration thereof, the said messuage, outbuildings, and all the windows, doors, hedges, ditches, gates, stiles, pales, rails, pump, pavements, plats, soughs, gutters, drains, watercourses, and fences, belonging to the said premises, in good

and tenantable order, repair, and condition, having timber in the rough, bricks at the kiln, stone at the quarry, and lime and slate at the wharf, allowed for that purpose.

Power to landlord to enter and view the premises.

To permit the said E. D., his heirs or assigns, or his steward, to enter and view the premises at any time, and in case the necessary repairs aforesaid are not done within one month after notice given in writing, to cause the same to be done, and the moneys so expended in repairs to be recoverable as rent in arrear.

To have sufficient stock, on farm.

To have, at all times, during the continuance of this agreement, a sufficient stock of cattle, horses, and farming implements, and dairy vessels and utensils, for the occupation and management of the said farm, in a proper and husbandlike manner.

Not to sell, &c., hay, straw, clover, fodder, or manure, under penalty.

Not to give, sell, or carry away from the premises, any hay, straw, clover, or fodder, or any dung, compost, or manure, which shall be grown or produced, made, gathered, or gotten, upon the said premises, under the penalty or increased rent of 10*l.* for every ton weight so given, sold, or carried away, and so in proportion for a greater or less quantity, but to eat and consume the hay, straw, clover, and fodder, by his own cattle, on the premises, and to set and spread the dung, compost, and manure, upon the mowing or pasture lands only, and at the expiration of this agreement, leave on the premises what shall not have been so eaten or consumed, set, or spread, for the use and benefit of the said E. D., his heirs and assigns.

To leave at expiration of agreement the outgoing tenant's share of wheat straw.

To leave upon the said premises, at the termination of this agreement, for the benefit of a succeeding tenant, the share of wheat straw which according to the custom of the country may belong to the outgoing tenant on quitting his farm, being allowed, however, two-thirds of the value of wheat straw which belongs to the outgoing tenant.

Not to break up or till meadow or old pasture

Not to break up, convert into, or have in tillage, any of the lands described in the hereinafter written

**lands under penalty.** schedule, as meadow or old pasture lands, without the consent, in writing of the said E. D., his heirs or assigns, or his or their steward or agent, under the penalty or increased rent of 50*l.* for each statute acre so broken up or converted into tillage, and so in proportion for a greater or less quantity than a statute acre.

**Not to mow more than once a year.** Not to mow any of the said lands more than once in any one year, under the penalty of 10*l.* for each statute acre so mowed, and so in proportion for a greater or less quantity than a statute acre.

**To manure meadow land every other year.** To manure the meadow land every other year, using after the rate of twenty tons of farm-yard muck for every statute acre, and so in proportion for a greater or less quantity than an acre, under the penalty of 10*l.* for each statute acre which shall be mowed without having been so manured, and so in proportion for a greater or less quantity than a statute acre.

**Not to plough more than 13 acres in any one year.** Not to plough, break up, or have in tillage, in any one year, during the continuance of this agreement, more than thirteen statute acres of the arable land, or land allowed for tillage, including green crops and summer fallows (of which not more than three statute acres shall be set or planted with potatoes) under the penalty of 20*l.* for each statute acre beyond thirteen acres, and so in proportion for a greater or less quantity than a statute acre.

**Not to set more than three acres with potatoes.** Not to set or plant with potatoes in any one year during the continuance of this agreement, more than three statute acres as before mentioned, under the penalty of 50*l.* for each statute acre beyond three acres which shall be set or planted with potatoes, and so in proportion for a greater or less quantity than a statute acre.

**To take only two corn crops in one course of tillage, between which there shall intervene a green** Not to take more than two crops of grain off any of the said lands, during one and the same course of tillage, and the said two crops not to be taken without the intervention of a well-hoed green crop or summer fallow, which hoed green crop or summer

crop or  
summer  
fallow and  
properly  
manured.

fallow to be sufficiently ploughed, harrowed, cleaned, and properly manured with at least twenty-five tons of good rotten dung to each statute acre for a green crop, and the dung to be purchased for that purpose, the receipts for which to be produced, or five tons of lime to the statute acre, for summer fallow, and with the second corn crop the land to be laid down with good seeds, as per Capesthorpe ticket. And the lands so laid down to remain in a state of grass until permitted by the said E. D., his heirs or assigns, to be again broken up or converted into tillage, and then only to be reploughed or broken up in its turn and the regular course of tillage, and in default of the above mode of cultivation or tillage to pay the penalty or increased rent of 20*l.* for each statute acre, and so in proportion for a greater or less quantity than an acre upon which a different mode of cultivation or tillage has been adopted.

The second  
crop to be  
laid down  
with red and  
white clover  
seed and  
other grass  
seeds.

The lands  
laid down  
to be in  
grass.

Penalty in  
default of  
the above  
mode of  
culture.

To marl  
lands before  
broken up.

To marl all lands before the same are broken up, if required so to do by the said E. D., his heirs, or assigns.

To summer  
fallow.

To summer fallow any of the said lands, when required so to do by the said E. D., his heirs or assigns.

Not to push  
or burn  
lands under  
a penalty.

Not to push, pare, or burn any of the said lands, under the penalty or increased rent of 20*l.* for each statute acre, and so in proportion for more or less than an acre so pushed, pared, or burnt.

To clip  
hedges and  
to plant  
quicksets.

To plash or clip the hedges or fences in a husband-like manner, and to plant and renew quicksets in them at his own expense.

To preserve  
young trees.

To take care of and protect and preserve all young trees or plants now growing, or which shall be planted, upon the said premises.

Not to crop  
or injure  
trees or  
underwood  
under  
penalty.

Not to crop, lop, top, or injure any of the under-wood, timber, or other trees, now growing or which shall grow upon the said premises, under the penalty or increased rent of 5*l.* for each offence.

Succeeding  
tenant to  
enter after  
1st of No-  
vember,

To permit and suffer the succeeding tenant of the said premises, after the 1st day of November in the year previous to the expiration of this agreement, to

before expiration of agreement, to do acts of husbandry.

Penalties to be recoverable by distress.

Green crops.

Drainage.

Proviso for re-entry, in case of non-payment of rent, or breach of agreement, or of sub-letting farm, or of tenant becoming bankrupt, &c.

enter into and upon the said lands and premises, to make barley fallows, plough any of the stubble land, get out and spread any dung, or do any other acts of good husbandry, without having any allowance for the same.

The above penalties or increased rents, in case any shall become due and forfeited, to be payable at the next rent day, or at the expiration of three calendar months, (at the discretion of the said E. D.) after the same shall become due and forfeited, and in case of nonpayment, the same to be considered as rent in arrear, and levied by distress and sale accordingly.

All green crops shall be sown in drills not less than twenty-seven inches apart, and no broad cast under similar penalties to the above per acre, or any less portion. The couch grass shall be all cleanly gathered and removed.

The tenant also hereby engages to drain his land when and in what manner he may be required, on notice given and materials furnished.

Provided always, and it is hereby agreed that if the said yearly rent hereby reserved, or any part thereof, or the said penalties or increased rents, if any shall become due, shall be unpaid for the space of twenty days after the same shall become payable, and there shall be no sufficient distress on the premises to satisfy the same, or if any of the several agreements hereinbefore contained shall not be faithfully performed and kept, by the said R. P., or if he shall set, let, or part with the said premises or any part thereof, or shall become bankrupt or an insolvent debtor, or assign over his effects for the benefit of creditors, or if his goods shall be sold under any execution or otherwise, it shall and may be lawful for the said E. D., his heirs or assigns, into the said premises or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, and re-enjoy as in his or their former estate.

And lastly, it is agreed that the said R. P. shall and will, when thereunto required by the said E. D., his

heirs or assigns, accept a lease of the said farm and premises, upon the terms and conditions above contained, and execute a counterpart thereof, such lease and counterpart to be prepared at the costs of the said R. P., by the solicitor of the said E. D., his heirs or assigns. In witness whereof the said parties to these presents have hereunto set their hands, the day and year first before written.

E. D.

R. P.

Particulars of a farm, in the township of \_\_\_\_\_ in the county of Chester, belonging to E. D., esq., consisting of a messuage and outbuildings, and of 53 a. 0 r. 15 p. in statute measure or thereabouts of arable, meadow, and pasture lands, now in the occupation of R. P.

No. on Map.	Names of Closes.	A. R. P. Statute Measure.
Schedule of Meadow and Old Pasture Land not to be converted into Tillage.		



No. 14.—[This very excellent Form was settled by Mr.  
Woollett Wilmot.]

*Adapted to the Customs of Cheshire, with Stipulations for  
Tenant Right.*

MEMORANDUM OF AN AGREEMENT, between                      of  
in the county of Chester, esq. and                      of the same place,  
farmer.

The said                      agrees to let to the said                      and the  
said                      agrees to take all and singular the lands, here-  
ditaments, and premises situated at                      aforesaid, as  
set forth in the annexed map and schedule, containing one  
hundred and twenty three acres and fifteen perches, or there-  
abouts, statute measure, for one year from the 25th day of  
March, 1849, and so on from year to year until the said  
tenancy shall be determined as hereinafter mentioned, at the  
clear annual rent of £                      payable quarterly when de-  
manded, subject to the conditions hereinafter contained.

That it shall be lawful for either the said                      or the  
said                      to determine this tenancy on the 25th day of  
March, in any subsequent year on giving six calendar months'  
notice in writing to the other of them of his wish so to do.

Provided always that in case the said                      shall become  
bankrupt, insolvent, or make an assignment, it shall be lawful  
for the said                      to take possession of the said lands and  
premises on giving one month's notice in writing to the said  
   of his wish so to do, and paying a fair valuation for  
all crops, tenant's right and labour up to the time of his taking  
possession.

That the said                      shall not underlet or part with pos-  
session of the lands or any part thereof.

That the said                      shall pay all tithes and land tax for  
the said lands and premises, and that the said                      shall  
pay all other rates and taxes, which are now or may hereafter  
become chargeable upon the said lands and premises.

That the said                      shall have power by himself, friends  
or servants to enter upon the said lands and premises for the  
purpose of viewing the same, cutting, planting or removing  
any timber or trees, sporting, and for all other reasonable

purposes. The game shall be reserved to the landlord, excepting the rabbits, which shall be the joint property of the said and

And it is further agreed that the said shall during his tenancy at all times at his own expense keep and maintain the said lands, with the buildings, ditches, hedges, drains, gates, posts, walls, and all other appurtenances belonging thereto, in good and tenantable repair and condition, the said finding all materials in the rough for such repairs, and in case any part of the said premises are accidentally injured by fire or tempest, he, the said will restore such part of the building so injured at his own cost and expense, the said leading the materials which may be required for the same.

The said shall keep in permanent pasture all the fields numbered 156, 163, 173, 177, 178, and 182 in the annexed map and schedule; and that the said shall pay the sum of twenty pounds for every acre or any portion of an acre that shall be broken up or converted into tillage as and for additional rent, which shall be paid with the next quarter's rent becoming due after such offence has been committed.

That the said shall at all times during his tenancy keep the said lands clean, and promote the fertility of the soil by keeping thereon an adequate quantity of cattle and sheep according to the modern practice of good husbandry.

That the said shall consume or use on the lands or premises, the whole of the fodder, straw, stubble, roots and green crops, the produce thereof, and shall not nor will at any time sell or dispose of any potatoes or turnips without having previously obtained the consent in writing of the said or his agent, and that he the said will use and consume all the manure which shall arise or be made upon the said lands.

That the said shall and will at the termination of this tenancy, deliver up the peaceable and quiet possession of the said lands to the said in good and tenantable repair, and in a clean and husbandlike condition, and shall leave at least one fourth part of the arable lands in clover or grass seeds, and one-fourth in summer fallow, turnips, or other green crops.

That on the termination of this tenancy the said shall allow to the said , by way of tenant's right, a full and fair compensation for all unexhausted improvements in the following proportions, that is to say, for all draining above six feet deep a proportion for ten years, deducting one-tenth each year ; for draining less than six feet deep, a proportion for seven years, deducting one-seventh each year. Bones or other artificial manures which are not supposed to be exhausted by one crop, the full amount where no crop has been taken, and deducting afterwards one-third for each crop. Bones applied to grass land a proportion for seven years, deducting one-seventh each year ; two-thirds of the value of a crop of wheat sown after a summer fallow, and one-half for a brush crop, making the deductions from such crops according to the custom of the country. For turnips, rent, labour, and taxes, deducting one-half the value when eaten on the ground and the full value when drawn, except where the said may claim a following crop, then no allowance shall be made for turnips. Oil-cake or other artificial food, one-fourth the first year, and one-eighth the second year, where the manure does not belong to the tenant.

The said agrees to leave at the expiration of this tenancy 100 tons of good rotten manure, properly thrown together in a heap for the use of the said or his incoming tenant, without receiving an allowance or compensation for the same, but shall be paid for any quantity of manure there may be left as aforesaid more than the 100 tons ; and the said shall pay unto the said the value of any less quantity than 100 tons stipulated to be left on the said premises as before mentioned.

And it is further agreed that all allowances shall be determined by arbitration, that is to say, by two persons, one to be chosen by each party, or by an umpire to be appointed by such two persons, the said umpire to be nominated before their entering upon the valuation ; and the award of such two persons, or their umpire, shall be binding upon each party.

And it is further agreed that the said shall give up possession to the said , or his incoming tenant, of the arable land on the 2nd day of February, the meadow land on

the 25th day of December, the pasture land on the 25th day of March, and the house and premises on the 12th day of May.

And it is lastly agreed that the name                      shall be construed to mean himself, his agents, heirs, or assigns ; and the name                      shall be construed to mean himself, executors, administrators, or assigns, and the word " lands " shall be construed to mean lands and premises.

As witness the hands of the said parties this  
day of                      .                      (Signatures.)

The Schedule before referred to.

No.	Description.	Cultivation.	Quantity.		
			A.	R.	P.
155	Near Hanger Hill  &c. &c.	Arable	9	3	2

No. 15.—[The following form is that adopted on, certainly, the most improving estates in North Wales.]

*Conditions of Farm-letting on the Baron Hill Estate, the Property of Sir R. B. W. Bulkeley, Bart.*

1. The farm to be divided into fields, to be approved of by the landlord.
2. Tenant to cultivate such part of his land as is intended for tillage in the following rotations :—
  - 1st year, corn.
  - 2nd do. do.
  - 3rd do., green crop well manured and kept free of weeds.
  - 4th do. corn to be laid down with clover and grass seeds.
  - 5th do. hay.
  - 6th do. grass to be continued as long as tenant chooses.
3. On change of tenants, all hay, corn, straw, green crops and manure to be taken by incoming tenant at valuation.
4. The incoming tenant to be allowed to sow clover, and

other seeds in the spring, and to pay outgoing tenant, for such as he may have sown, at a valuation.

5. All hay and straw to be consumed on the farm, unless *bonâ fide* exchanged for manure of equal value, and, in that case, the quantity of hay and straw so exchanged shall not exceed one-third of the total quantity raised in one year on the farm.

6. The tenant to keep house, buildings, gates, ditches, fences, &c., in good order and repair.

7. No new buildings to be made except by the approval of landlord.

8. Tenant to pay all tithes, poor rates, taxes, and other outgoings.

9. Tenancy to commence on the 13th of November, and continue from year to year as long as both parties agree, determinable on the 13th day of November by either party giving six months' notice to quit previous to the 13th November in any year.

10. Game to be preserved for the landlord, and the tenant to keep one dog for his use.

11. The landlord, by himself or agent, to have at all times access to the farm.

12. All valuations to be made by two indifferent persons, one to be named by the landlord and the other by the incoming tenant; if they disagree an arbitrator to be named by the landlord.

13. No gorse to be cut during the last three months of the tenancy.

14. These conditions are to be construed according to the most approved rules and system of convertible husbandry.

15. The tenant to take care of all trees.

16. The rent to be payable quarterly, on the 25th December, 25th March, 24th June, and the 29th day of September in each year.

It is agreed between the undersigned, that A. B. is to be tenant of the farm of C., situate in the parish of D., in the county of E., from the 13th day of November next, subject to the due performance of the above conditions, at the rent of £ . Witness our hands, this day of

No. 16.—[The following form is somewhat feudal in its character, and little adapted to the ordinary circumstances of English tenancies. It is inserted here because there are many provisions in it which may occasionally be found useful. Very large districts of territory in Scotland are held under articles quite similar.]

*Minutes of the Articles and Conditions of Parol Leases, from Year to Year, upon the Estate of A. B., Esq., at in the County of [adopted from an Agreement in use in the County of Perth].*

- |  |   |
|--|---|
| <p><b>Residence.</b></p> <p><b>Assignees, &amp;c., excluded.</b></p> | <p>1. The tenants are bound to reside upon the possessions respectively let to them, and assignees and sub-tenants are expressly excluded; and failing a male heir, the eldest daughter, or female heir, shall succeed without division, and to the exclusion of heirs-portioners.</p>  |
| <p><b>Reservation of minerals.</b></p>                               | <p>2. The proprietor reserves all minerals and fossils of every description, and quarries of all kinds, within the lands, with power to search for and work the same, to make all roads and levels necessary thereto, and to erect buildings and all other works for manufacturing and taking away the same. He also reserves power to plant and enclose any part of the lands at any period; and the tenants shall be entitled to the surface damage sustained through such operations, in proportion to the rent of the whole farms or possessions, as the said damage shall be ascertained by two valuers mutually chosen, or, in case of difference, by an umpire (in Scotland called oversman) to be appointed by them; but it is expressly declared, that the tenants shall not be entitled to withhold any part of their rent on account of such damage, until the same shall have been ascertained and determined in manner aforesaid. And it is moreover expressly declared, that the tenants shall have no claim for sur-</p> |
| <p><b>Power to plant.</b></p>  |   |

face damage on account of planting upon the ground which is marked on the plan of the district with a red line, or upon the common hill grounds, which the proprietor may plant at any time, without allowing compensation for the same.

Reservation  
of woods,  
game, and  
fishings.

3. The proprietor reserves all the arable land which may be within the wood enclosures, together with the woodlands and all the wood thereon, with full power to cut timber and copse wood, and to enclose the same, to manufacture the bark, and to burn and carry away charcoal; he also reserves power to make and alter roads and loanings, and to quarry materials for repairing public and private roads, and to plant rows of trees along the fences and verges; he also reserves the whole moss on the farms and common hill grounds, with power to allow his other tenants to cut and carry away peats. The proprietor also reserves all salmon and other fishings, and game of every description, on or connected with the lands, with the exclusive right of hunting and shooting on the grounds, and of fishing in the rivers and lakes, by himself or others having his permission, and with power freely to perambulate the grounds at all times, and to examine the state of the fences and biggings, and the rotation of cropping, by himself or others having his authority; and the tenants shall not be entitled to compensation on account of the exercise of any of the powers reserved in this article.

Straightning  
marches.

4. The proprietor farther reserves power to straighten and alter the marches of the different possessions, and of the common hill grounds; and the tenants shall receive compensation for any ground that may thus be taken away, and shall pay for any ground that may be added to their respective possessions, or to the common hill ground, as the same shall be ascertained by arbiters to be nominated in manner aforesaid.

Payment of  
rent.

5. The rent specified in the separate offers or minutes of lease relative hereto shall be paid by the respective tenants, their heirs, executors, and suc-

Penalty for  
non-pay-  
ment.

Services.

cessors, to the proprietor, his heirs, executors, and successors, by equal portions, on the first day of March and the first day of August in each year, during the currency of the lease, beginning the first term's payment on the first day of March immediately after entry, and so forth termly thereafter; and the said rents shall be payable at such place or places as the factor on the estate shall appoint, with one fifth part more of penalty in case of failure, and interest of each term's rent from and after the term when the same becomes due, during the non-payment thereof.

Each tenant of a lot or farm, and each crofter, shall, in addition to the stipulated money-rent, deliver at , before the first day of October yearly, two cart-loads of good, dry, and well-seasoned peats (every cart-load weighing at least eight cwt.) for each horse kept by the tenant, at any season of the year; or, in the proprietor's option, he shall pay a conversion of four shillings for each cart-load; and every such tenant and crofter shall perform yearly, when required, the carriage of fifty stones imperial of coals from or to or for each horse kept by him, at any season of the year; or, in the landlord's option, he shall perform a carriage of equal weight and distance, or pay a conversion of ten shillings for each horse; and the tenants of two or more lots shall perform yearly the carriage of one hundred stones imperial of coal, or other similar carriage as above, or pay a conversion of twenty shillings for each horse kept by them as above. And also, all tenants and crofters shall yearly, when required, perform a proportion of the carriage of oak bark on the estate, to the extent of not less than fifty stones imperial for each horse, without making any charge for the same; and the tenant of each lot shall yearly deliver two good fat fowls, or, in the proprietor's option, shall pay a conversion of one shilling and sixpence for each. Moreover, the tenant of each lot, and every crofter keeping a horse, shall deliver yearly one good cart-load of peats to the



schoolmaster, within their respective districts, or shall pay five shillings for every cart-load undelivered; and they shall also perform a proportional part of the carriages to the parish church, churchyard walls, parsonage, and offices, school-house, and school-master's house.

Fire  
insurance.

6. It shall be in the power of the proprietor at any time to insure against fire, such of the dwelling-houses and farm-steadings as he considers proper, and the tenants shall pay one-half of the yearly premium and duty, along with the rent of the possession.

Mill and  
smithy.

7. The tenants shall carry all their grain to the mill to which the lands are respectively thirled, and their smith work to the proprietor's smithy, and shall pay to the miller and smith such dues as the proprietor shall, from time to time, establish for the different mills and smithies, on the property, and they shall perform their share of necessary services and carriages to the mills, mill-dams, water-leads, and smithies, and other services of the like nature that are useful on the estate, according to use and wont. The tenants and crofters shall attend the baron and other courts, to be held by the proprietor or by his steward, and shall obey the regulations and enactments made thereat. And the steward's order or decree for additional stipulated rent, deficiencies on steadings and dikes, miscropping and oversowing, shall be equally valid and binding upon the tenants and crofters as the principal rent.

Comprise-  
ment of  
houses and  
fences.

8. The tenants shall be bound to receive at their entry, under inventory and valuation according to the usual method of computation, the whole houses, dikes, and fences, considered necessary for the farm by the proprietor, and to expend on repairing the same the whole sum charged against the outgoing tenants, for deficiencies as hereinafter provided, and that within the first year of the lease, to the full satisfaction of the landlord's factor. And the tenants shall be bound to maintain and uphold the whole of the said houses, march-dikes and fences, and all others erected on the

farm, during their occupancy, in complete tenantable condition and repair, during the whole currency of the lease, and to leave them so at their removal, or to pay the deficiency thereof, as the same shall be ascertained by the valuers or umpire; and the amount of such deficiency, as so ascertained, shall be exigible from the tenants, and be in fact an additional rent due and payable by them, for the last year's possession, for the recovery of which the proprietor shall be entitled to use all legal means competent to him for making the other stipulated rent effectual; and, notwithstanding the foregoing stipulation for payment of deficiencies, it shall at all times be in the power of the proprietor to employ workmen to repair the houses and fences, and the tenants shall be bound to pay the expenses thereof, which shall be regularly constituted by the workmen's discharged accounts for the same. And it is hereby declared, that no doors, latches, partitions, windows, lofts, joists, hearths, wood or stone flooring, or any other article of finishing, whether fixture or not, shall be carried away by the tenants at removal.

Cleanliness  
and good  
order.

9. The situation and arrangement of farm steadings shall in all respects be subject to the approval of the proprietor, and the greatest order, regularity, and cleanliness shall be observed by each tenant about his premises. No wood, dung, or litter of any kind, shall be exposed in front of the buildings, nor shall sheds or temporary buildings be erected, and pigsties and dunghills shall be placed in concealed situations behind the buildings, and at a sufficient distance from the dwelling-house; and adjoining to each steading of houses the tenant shall enclose forty square poles of ground for a garden, unless there be a garden of that extent already, and he shall preserve such fruit or other trees as the proprietor may plant there for use or ornament.

Making  
drains and  
fences.

10. The proprietor hereby reserves the power of making march-dikes, fences, and drains of such kinds, and in such directions, as he shall think proper, and

Improving  
waste  
ground.

Embanking  
streams.

the tenants shall be bound to pay annually thereafter, along with the stipulated money rent, at the rate of seven and a half per centum for the money so expended ; or the proprietor, instead of taking the said per-centage, shall have the option of being at the expense of building the fences, and the tenants in this case shall be bound to quarry and lead all materials ; and whatever drains the proprietor may think fit to open shall be filled and covered up by the tenants, in such a manner as shall be directed and approved by a person to be appointed by the proprietor. And as parts of the lands are now in a waste and uncultivated state, the tenants and other occupiers are hereby bound to clear and bring into tillage the whole improvable ground on their respective possessions, as the same shall be pointed out by the surveyor, or other person appointed by the proprietor, and that in the proportion of one fifth part thereof at least every year, and they shall commence doing so immediately on their entry, and shall continue until the whole is cleared and brought into tillage, and the said grounds shall thereafter be managed, laboured, and manured along with, and in the same manner as the other arable land of their possessions. Moreover, the tenants shall be bound to protect the banks or streams or rivers running through or beside their respective possessions, by facing the banks thereof with stones, or erecting bulwarks, as may be pointed out by the factor, so as the adjoining land may be preserved from injury during floods, without receiving any remuneration for such work : And farther, the tenants shall drain and cultivate all baulks and patches betwixt and in the ends of the arable land in their possessions, and shall demolish all houses which the proprietor may consider unnecessary, and remove all loose cairns of stones, in order that fields, which at present are only partly arable, may be completely cultivated in a proper and uniform manner, and the stones shall be disposed of under direction of the ground officer. And if the tenants shall fail in filling

Destroying  
vermin.

the drains that may be so opened, within the period allowed for that purpose, or in bringing such land as may be pointed out into cultivation as above specified, then the proprietor, or those acting for him, shall have power to employ workmen to do the said work, and to charge the expense against the tenants, who shall be liable in immediate payment of the same, according to the workmen's discharged accounts, which are hereby declared to be sufficient vouchers. The tenants are hereby bound to engage an active mole-catcher, at their own expense, to keep their grounds constantly clear of moles, and, in the event of the proprietor appointing a person to destroy foxes and other vermin, the tenants of farms shall be bound to contribute such a proportion of his salary as shall be fixed by the factor.

Manage-  
ment of  
arable  
ground.

Flax, &c.

Five-field  
course.

11. In the management of the arable ground, the tenants are expressly bound to adhere to the rules of good husbandry; and they shall not at any period of the lease take two successive corn or white crops from the land without an intervening green crop, grass, or fallow. And flax, or pease and beans sown broadcast, shall on no account be deemed a green crop; and if flax be sown, it must be in the oats or barley division, and if in the latter, then along with grass seeds, as after specified, and it shall not be sown in any season in greater quantities than four pecks by tenants, and one peck by crofters. And during the currency of the respective leases, tenants of two or more lots must at all times have their arable ground in five regular divisions, viz. one-fifth part shall be in drilled green crop or fallow, sufficiently cleaned and manured; one-fifth part shall be in barley or oats, laid down with eight pounds of red clover, eight pounds of white clover, one pound of rib grass, and a bushel and a half of perennial rye-grass seeds, per acre, all of the best quality; one fifth part in sown grass, one year old, to be cut or pastured in the tenant's option; one fifth part in sown grass, two years old, to be pastured, and the remaining fifth part in oats; and

Four-field  
course.

these divisions shall be in regular square breaks or fields, as shall be laid off by the surveyor or other person authorized by the proprietor, and not in patches, and the crops shall succeed each other in the order above stated, and in this order and condition shall the whole be left at the tenant's removal. The occupiers of single lots and crofts shall have one fourth part of their arable land in green crop or fallow, one-fourth in barley laid down with clover and grass seeds, as above, one-fourth in sown grass, and the remaining fourth part in oats: And if any of the tenants or crofters shall adopt a different mode of management and cropping than is here stipulated, they shall pay 4*l.* sterling of additional rent for each acre that shall be differently managed, and not in the rotation hereby prescribed, and in proportion for any less quantity, and that at the first term after such deviation takes place, and so forth yearly, as long as the same shall continue; and a discharge of the principal rent shall not operate as a discharge of the additional rent hereby stipulated to be paid, unless specially mentioned therein; and it shall be in the power of the proprietor either to accept of the additional rent, or by any proceedings in law or in equity, or otherwise, to prevent the tenants and crofters from deviating from the system of management above prescribed. No meadow ground, or ground which is overflowed by rivers in time of flood, shall be broken up or tilled without the special consent of the proprietor. The tenants shall be bound to hain and preserve, from and after the 12th day of May, in the year of their removal, all natural hay grounds and sown grass, and the incoming tenants shall have liberty to sow grass seeds among all the last-year's corn crops and flax, if they see fit, and the outgoing tenants are hereby obliged to harrow and roll the same in a proper manner, without any compensation. The tenants shall not sell or dispose of any manure, straw, or corn in the straw, or meadow hay, but shall use and consume the same on their respective

able ground on his possession, in manner before specified, or shall be detected smuggling or selling spirituous liquors, or shall be convicted in any trespass on the woods, game, or fishings, then, and in any of these cases, the lease, following hereon, shall, in the option of the proprietor, become, *ipso facto*, void and null, and it shall be in the power of the proprietor forthwith to remove such tenant from the lands, in like manner as if the years for which the lease was to endure had terminated, or the tenancy had been determined by a regular notice to quit.

Cottagers  
and cot-  
tages.

15. The tenants shall not at any time admit cottagers into houses on their possessions, nor shall they remove cottagers who have once been admitted, without having in both cases the express sanction and authority of the proprietor, or his factor, in writing, under the penalty of 5*l.* for every offence; and tenants shall not be entitled to demand rent from cottagers until the amount has been fixed by the landlord or his agent: That it shall always be in the power of the proprietor to remove cottagers from any of the possessions without assigning a reason, or making the tenant a party to the action of removing, and he may dispose of cottages and gardens without the consent of the tenants, or being liable to any claim on their part.

Regulations  
as to last  
crop.

16. The tenants, at removal, where the lease shall have expired, or where they may leave their possession from any other cause, shall be obliged to give the whole of their last-year's grain crops, and the one-year-old sown grass, to the incoming tenant, at a valuation, and the incoming tenants shall be bound, in all cases, to accept of the same; and the price thereof, after deducting any sum that may be payable by the outgoing tenant for deficiencies of houses or fences or miscropping, in manner before provided, shall be paid by the incoming tenant to the proprietor, to the extent of all rent and arrears due to him by the outgoing tenant, and the surplus, after settling these, shall at the first term of Candlemas

Regulations  
as to sheep  
stock.

after removal, be paid to the outgoing tenant: And it is hereby declared, that both outgoing and incoming tenants must, in respect to the crop, deficiency of houses and fences, and all other matters connected with their entry to, or removal from the lands, conform to the regulations which the proprietor lays down. And, in the event of any disputes arising between outgoing and incoming tenants, or between tenants in possession, in regard to valuations of stock or crop, deficiencies on houses or dikes, the agent on the estate, for the time being, shall act as sole arbiter therein, or he is empowered, at the desire of either party, to appoint a neutral person to act as referee, and, in either case, the decision pronounced shall be final and obligatory on both parties. The tenants shall be bound and obliged to take the sheep stock on the farm at entry, according to the usual method of the district, at the valuation of valuers, and, on delivery, shall give satisfactory security for payment of the price at the term of Martinmas following, and at the expiry of the lease, the proprietor or incoming tenant shall, in like manner, take the fair and regular stock of sheep on the farm; but, should the tenant, from any cause whatever, give up or remove from the farm before the expiry of the lease, it shall be optional to the proprietor, whether he or the incoming tenant shall take the stock at valuation or not, and in no case shall the sheep delivered ever exceed the usual stock of the farm.

Regulations  
as to  
stocking.

17. It is expressly stipulated, that the present stocking and surcharging regulations in the different districts shall be strictly observed by all the tenants; and it shall be in the power of the proprietor or his factor to alter them at any time, to make new regulations therefor, and to prohibit the keeping of sheep, and to substitute black cattle instead, as may seem proper; and the tenants hereby bind and oblige themselves to give obedience to all such regulations; and if any tenant or other occupier shall, at any time, have more stock than are allowed by the present regula-

tions, or by such other as may hereafter be established, they shall pay, on the 1st day of March following, an additional rent of 3*l.* sterling for each overstock kept by them. A free range of sheep pasturage shall be allowed within the bounds of each district, and the tenants must employ joint herds. The tenants occupying two or more lots shall have their stints in proportion, but no lot shall be reckoned double unless so specified. Where tenants are burdened with a crofter by desire of the proprietor, they will be allowed to keep an additional stint or cow's grass on the hill for such crofter; and no crofters shall be allowed to keep horses at any time, unless permission to this effect be given by the landlord or his agent; and all who are so permitted are hereby bound to till their neighbour's croft, and to lead home his fuel if required, and the compensation for so doing shall be fixed by the agent or factor. Proper bulls and tups shall be kept by all the tenants, subject to the approval of the inspectors, who may from time to time be appointed by the proprietor to examine the stock of the common hills; and bulls and tups that may be condemned by them shall not be kept on the possession thereafter, but shall be immediately disposed of, under a penalty of 5*l.* sterling for each omission so to do: And, in order to prevent overstocking, it is farther provided and declared, that the tenants of each district shall, at the term of Whitsunday yearly, appoint two of their number, who, along with the ground officer, shall take the whole charge of superintending the common hill grounds and the stock kept thereon; and the said two persons shall attend at the different gatherings in the district to count the sheep belonging to each tenant, and shall report yearly to the landlord, or his agent, the number of stock kept by each individual, and that at the term of Martinmas, or at such other period as may be fixed; and if any of the tenants shall wilfully remove or conceal their sheep, in order to prevent the exact number being ascertained, it is hereby ex-



pressly declared, that such tenant shall forfeit all right to the hill pasture, and his share thereof shall be disposed of as the proprietor may see fit.

Claims on  
landlord to  
be stated in  
writing.

Lastly. Upon the expiry of any lease presently current on the estate, or that may hereafter be entered into, or of any tenancy, every agent shall be bound to intimate in writing, to the agent or factor, any claims which he believes he has against his landlord, arising out of his possession under the said lease, and that on or before the term of Martinmas in the year when the said lease expires; and failing his then lodging any such claim, it shall be held and understood that he has none such, and he shall be debarred and excluded from making or pursuing any claim in all time thereafter.

No. 17.—[It is important that a landlord, who wishes to exercise any efficient control over the comforts and morals of the labourers upon his estates, should retain the cottages in his own hands. In many cases, the cottages thus reserved are let at a weekly rent; but, in others, I have found an agreement similar to this form in use.]

MEMORANDUM OF AGREEMENT, made to                      day of  
in the year of our Lord one thousand eight hundred and  
between A. B., of, &c., by C. D., of, &c., his agent,  
of the one part, and                      in the parish of                      and  
county of                      labourer, of the other part.

The said A. B. hereby agrees to demise and let, and the  
said                      hereby agrees to take and occupy all that cottage  
and garden, situate at                      in the parish of                      and  
county of                      aforesaid, commonly called                      con-  
taining                      being No.                      on the tithe-apportionment  
map of the said parish, for one year, from the eleventh day of  
October next, and so on from year to year, determinable never-  
theless at any period, on three calendar months' previous  
notice at any time in writing given by either landlord or tenant  
to the other for that purpose, at and under the yearly rent  
of                      payable quarterly in equal portions, on the sixth  
day of January, the sixth day of April, the sixth day of July,

and the eleventh day of October in every year, the first payment thereof to begin and be made on the sixth day of January next.

Provided nevertheless, and it is hereby declared and agreed, that notwithstanding the reservation last aforesaid, the rent for the last portion of the said tenancy, whether such tenancy be determined by notice as aforesaid, or by mutual agreement or otherwise, shall be due and payable in advance, on the day next succeeding the day on which such notice to quit shall have been delivered, and such rent shall, at any time after such notice, be recoverable by all such means and remedies as landlords are by law entitled to take and use for rent in arrear reserved by lease or common demise.

The said                      hereby agrees to pay the said rent according to the reservation and terms aforesaid, to pay all parochial rates and taxes in respect of the said premises, and to keep and leave the said cottage and premises in good and tenantable repair and condition.

In witness whereof, the said parties to these presents have hereunto set their hands, the day and year first above written.

A. B.

By his agent,

C. D.

\* \* In order to prevent the crowding of two or more families into cottages intended for one only, and thus breaking through those rules of decency and order which are essential to morality and health, the said A. B. requires that the occupier of the cottage held under the foregoing agreement, shall not allow any married couple, whether his own children or not, to come to lodge or reside with him, without the permission in writing of the landlord or his agent.

Any breach of this rule will involve the loss of the cottage.

## CHAPTER VIII.

## OF LEASES FOR A TERM OF YEARS.

Policy of Leases for Terms as distinguished from Yearly Agreements.—  
Length of Term.—Formal Parts of the Lease.—Covenants.—Provisoes.

UPON the policy of granting agricultural leases I shall here no further treat than to sum up the opinions of such experienced practical agriculturists as have communicated with me upon the subject.

To a tenant, the advantage which a lease for years has over a yearly agreement, with security for unexhausted improvements, is this—that he has the comfort of feeling secure in his possession. I cannot discover in the reasons given by the advocates for leases any superiority in a term of years *as a security for capital employed*. The term of years does not better provide against loss of money and labour, but it provides against the inconvenience of being compelled to change the sphere of their employment.

On the other hand, a lease for a term has the corresponding disadvantage—that it binds the tenant to the soil for the term specified—that it compels him, except in the rare case of corn rents, to pay a fixed yearly sum for a thing whereof the value changes with every shifting variety of season or legislation—that it fetters him with covenants and conditions which long before the term expires may act most mischievously upon his interests—that it marks out a narrow path in which for twenty years yet to come he must walk, no matter how changed the principles of the art of agriculture may be, or how depreciated the value of the land—and that it impedes continually over his head, for the infraction of any single covenant, the forfeiture of his term and the loss of his capital.

The landlord's advantage in granting a term of years is,

that he usually obtains a higher fixed rent, avoids a perpetual tenant right, and is released from the drawbacks which accompany the management of landed property. He has good right to expect the punctual and unabated payment of his rent; and, with a reversion twenty years distant, to leave the lessee alone to pursue his unassisted course within the hedges of his covenants.

Against this advantage must be set the loss of all interest in his own estate, a great abatement of power for good as well as for evil (*a*), and the risk of letting his land to a bad tenant. This last is a very great penalty upon lease granting. I am told by the managers of estates in the West and South Midland districts, that it is not uncommon to see a farm that is under lease and in the hands of a bad farmer, gradually going back in the scale of cultivation, until it is plain that without any flagrant breach of covenant, a few years must exhaust both the farmer and the farm. The remedies in such a case are, either to bring an ejectment for some apparently slight breach of covenant—an odious and harsh proceeding against perhaps an honest, although an unskilful, man—or to suffer him to go on until he becomes bankrupt—and then to take back the farm and expend several years' rent in its restoration; or, which is the more usual course, to make an immediate sacrifice and buy back the lease.

Under ordinary circumstances it does not therefore appear, upon a balance of advantages and disadvantages, that a term of years has either for landlord or for tenant any superiority over a tenancy from year to year, with an agreement and a tenant right.

*Length of Term.*—The duration of the term of a farming lease should not be less than fourteen nor more than twenty-one years. The measure of the term is the time required to

(*a*) It does not enter within the scope of this work to consider either the political or the social bearing of any of the various contracts between landlords and tenants. It is impossible, however, for any one who has had large experience of agricultural districts, to avoid the reflection that it is by no

means an absolute good that the landlord should be without power upon his own estate. This practically relieves him from all responsibility for the condition of the labouring population, and places the labourer entirely in the hands of the farmer.

return to the tenant the capital which he may expend in permanent improvements. According to the best opinions, there are none of these which, if judiciously made, are not repaid with a profit in twenty years. Leases for seven, ten, and twelve years, common as they are in many parts of the country, are now generally pronounced to be the most injurious tenure possible. They give no encouragement or security to the tenant, produce no permanent improvements, cause the land to be racked during the last two years, and deprive the landlord of his power over his estate without any return or advantage, either to landlord, land, or labourers. Wherever these leases are common, bad agriculture is found to prevail.

Perhaps the best term for an agricultural lease is twenty-one years certain, and after the expiration of the twenty-one years, then until the expiration of a notice of two years given by one of the parties, of his intention to determine the lease at the expiration of the notice. This elasticity in the term will prevent it becoming the interest of the lessee to run out the land in the last years of the lease (b).

*Of the formal Parts of the Lease.*—Of the various parts of a lease I have already spoken in detail while treating of the instrument of demise from year to year. The only remark I have here to make upon the parties, the demise, the parcels, the reservations, the exceptions, the habendum and the redendum, is, that in a lease from year to year, these may well be expressed in the shortest form of words which will convey the meaning of the parties, for any inconvenience that may arise can always be put an end to by either party by a notice to quit. But in a lease for a term of years, when the landlord parts with his land, and the tenant takes upon him a rent and covenants for long time, it is much better that those forms of words be used upon which the law has been accustomed to put a sure construction. Therefore it is that I have compiled a separate set of precedents for leases for years, even in cases where the substance of the stipulations is identical. Such principles of law as appeared necessary to the practical appreciation of these parts of the instrument have already been set forth in the preceding chapter.

(b) See Form of Lease, No. 1, p. 407, *post*.

*Covenants.*—The covenants of a lease for years will differ from those in a lease from year to year partly in form—for the reason already given—and partly in substance on account of the different position of the parties. Thus, in a lease for twenty-one years, a landlord may well require a covenant that the whole of the farm shall be thoroughly drained, new buildings made, and machinery erected—that these works shall be done within one or two years, to the satisfaction of arbitrators or an umpire, to be appointed in the usual way—and that all such permanent improvements shall be kept in good repair during the term, and left for the landlord without compensation at the termination of the lease. At the end of the twenty-one years the expenditure will have been repaid with a profit; and the improvement of the farm was the consideration for which the landlord parted with his power over it for so long a term.

The landlord will find it necessary, for the security of his reserved right of sporting, to have a more particular provision in that respect in a lease for a term than would suffice in a tenancy from year to year. In addition to the reservation he will require a covenant to the effect that the lessee will allow the landlord and all authorized by him to sport, will preserve the game for the sole use of the landlord, and permit to the keepers continual access, and all facilities for preserving, breeding, and rearing the same; and will allow his name to be used in all prosecutions or actions against poachers, the landlord of course indemnifying against all consequences.

The covenants for culture during the latter years of the lease (or, in case the more expansive term above mentioned be adopted, then after notice to quit on either side,) should be more stringent in leases for terms than in tenancies from year to year. Thus, the lease may well provide that during the last two years of the term, or after notice of determination given, the previous rotation of crops shall not be changed; that no fodder crops shall be led off the farm without special permission in writing of the lessor; that during the same period the same quantity of stock shall be kept upon the farm, and the same quantity of oil cake consumed as had been kept and consumed upon the average of the four years preceding (see Form of Lease, No. 1, clause 2). In such cases, however, the

lease should always provide that the manure in the yards, and all unexhausted manures on the farm, shall be paid for by valuation; or that some other inducement (such as will be found at page 338) be offered to the outgoer to preserve his manure: otherwise, in spite of all covenants, the farm will be reduced during the two years to a mere *caput mortuum*. It should also be provided that the proper husbandry operations shall be continued up to the time of the determination of the lease; that the lessor be allowed in the valuations for all such operations wherefrom he has derived no benefit, and also for the rent and taxes accruing upon the land during its unproductiveness; but any damage arising from the non-performance or ill-performance of such operations should be deducted from the general outgoing valuation.

On the other hand, the tenant in a lease for twenty-one years should be allowed great latitude as to culture. Where the landlord is perfectly satisfied of the solvency and skill of his tenant, and where the latter commences by investing large sums in permanent improvements, it may be doubtful how far any covenants are requisite to guide the cultivation during the first ten or fifteen years of the term. The tenant's interest is so identical with the well-being of the farm, that the only necessary provision would appear to be against breaking up old turf, where the soil is such that it cannot be re-produced. Upon some soils, turf once broken up cannot be re-produced in twenty years; but, in the general average of light soils, it will be sufficient to stipulate that all permanent grass broken up shall be laid down in the tenth year, and not again disturbed.

Where the capital or the skill of the tenant is doubtful, it is as necessary to confine him to culture as if he were a tenant from year to year, lest he should exhaust the land and fail. But if the lessee be a good farmer and a solvent man, and such only should be trusted with a term of years, it will be enough to bind him not to change the permanent character of the farm without leave, or to restore it to its original character before the commencement of the last ten years of the term; not to carry on any course of culture, which arbitrators or an umpire shall declare to be pernicious; and not in any way to change the course of culture, either in rotation of crops, or in keep of stock, or in application of manures after notice

to determine the lease given, or within (two or) three years of the expiration of the term.

*Provisoes, &c.*—In leases for terms of years, it is important that the proviso for re-entry be not so stringent as to place the lease continually in the power of the landlord. In tenancies from year to year, the proviso for re-entry cannot be too stringent; for the tenant has his outgoing allowances, and the re-entry is not likely to occur except to prevent waste. But a term of years is an important interest, upon the faith of which large moneys have been laid out; and the re-entry clause should be certainly so worded as only to operate in cases of very substantial damage, and after notice from the landlord.

It is often a condition of the agreement for a term of years, that the tenant shall have the option of determining the lease at the end of the first seven or fourteen years. In such case, he should be equally compelled to leave his permanent improvements without compensation; otherwise, a tenant might be enabled to throw the cost of injudicious experiments in draining, fencing, and building upon the landlord.

These are the only observations which it appears necessary to make upon agricultural leases for terms, as distinguished from instruments of letting from year to year. We may now therefore proceed at once to the precedents.



## CHAPTER IX.

## FORMS OF LEASES FOR TERMS OF YEARS.

## No. 1.

*Lease for Twenty Years, and so from Year to Year, afterwards, determinable after two Years' Notice, with special Proviso for Re-entry, and Covenants expressly adapted to the Security of the Landlord.—Reservation of Game and Cottages.*

1. Parties.  
(See ante, p.  
153.)

THIS INDENTURE, made the                    day of  
in the year of our Lord 18                    between  
of the first part, and                    of the other part,

2. Demise.

Witnesseth, that the said                    for himself, his  
heirs, executors, administrators, and assigns, doth de-  
mise, lease, and to farm let unto the said                    his  
executors, administrators and assigns,

3. Parcels.  
(See ante, p.  
154.)

All that farm called                    situate in the said parish  
of Catherington, together with the messuages, pre-  
mises, buildings, gardens, common of pasture, and  
other appurtenances thereto appertaining, containing  
in the whole                    acres,                    roods, and  
perches, statute measure, more or less, and now in  
the occupation of the said                    , and which are

4. Excep-  
tions and  
reserva-  
tions.  
(See ante, p.  
156.)

Cottages.  
Trees.

more particularly described in the schedule to this in-  
denture annexed. Except and always reserved, out  
of this present lease, all cottages and cottage gardens  
with the appurtenances to the said cottages belong-  
ing; all growing wood, saplings, and timber-like  
trees, and all other trees likely to become timber,  
and all fruit trees (but not the fruit thereof), and  
the bodies of all pollards, and the lops and tops  
of all such trees as have not been usually lopt or topt,

now growing, or which hereafter shall be growing on the said premises ; and reserving also liberty to the lessor and his servants, with all necessary implements, horses, carts, and carriages, to enter at all seasonable times upon the said premises (doing as little damage as possible), in order to value, fell, prune, hew, or carry away the said timber and timber-like trees, or the lops, tops, or bark of the same ; and also to plant, for his own use, any young trees or saplings in the fences or hedge-rows ; and also any mines, minerals, stones, flints, chalk, marl, brick, clay, or building materials which may be found upon the said premises, in like manner to carry away ; with power also to the lessor to search for, work, and dig out the same, and to do anything necessary for these ends, by sinking shafts or pits, making roads, erecting buildings, machinery, sheds, kilns, or otherwise (making reasonable compensation, in the latter case, to the lessee, for any injury done to the said farm) ; and reserving also all royalties and game, with liberty to the lessor and those having his authority, to hunt, course, shoot, fish, and fowl upon the said premises, and to kill, for his and their own use, the game, rabbits, or other wild animals thereon (doing no unnecessary damage to the said premises). Provided that, in case the rabbits upon the said premises shall become so numerous as to effect serious injury to the cultivation of the said farm, then, after notice of that fact given as aforesaid, in writing, by the lessee to the lessor, the lessee shall, during the month of February in any one year, but in no other month, in case the lessor shall after such notice refuse or neglect so to do, be at liberty to destroy a reasonable proportion of such rabbits, either with dogs, guns, or ferrets, using no snares, springes, gins, or traps of any description whatever, for that purpose ; reserving likewise from this present demise power to the lessor, and his agents and servants, at all seasonable times in the day, to enter into and upon the said premises, and every part thereof, to view the state of

Mines and minerals.

Game.

Rabbits.

Entry to view.

repair and condition of the same, and to ascertain whether the stipulations in this agreement contained are complied with.

5. Habendum.  
(See ante, p. 165.)

To have and to hold the said demised premises with their appurtenances for the term of twenty years certain, from the 25th day of March, A.D. ,

and so on from year to year, until either party gives to the other a two years' notice in writing of his intention to put an end to the said term, such notice to be given only on or before the 25th day of March, A.D. , or on or before some subsequent 25th day of March in any following year,

and to expire on the 25th day of March which shall happen next after the expiration of two full

Notice.

years after such notice shall have been given; and such notice to be served personally upon the other party, or left at his or their last known place of abode, at least two years as aforesaid next preceding the time when the said term is to be ended and determined thereby; and to be of no force or effect unless at the option of the party to whom the same is given, unless the party giving such notice shall, both at the time of giving such notice and also at the expiration of the time limited in the same, have fully performed all and every the covenants, provisoes, conditions, and agreements respectively herein contained on his part to be performed, or the performance thereof respectively shall have been previously waived by a memorandum in writing in that behalf, signed by the other party.

6. Redden-  
dum.  
(See ante, p. 169.)

Yielding and paying therefor, during the said term, the yearly rent of £ (c), payable quarterly, on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March in each year, free from all parliamentary, parochial, and other taxes, rates, tithes, tithe rent-charges,

(c) For Corn Rents, see pp. 172-178, and pp. 268-270, ante; and

Forms of Lease, Nos. 5 & 10, post.

7. Ad-  
ditional  
rents.  
(See *ante*, p.  
180.)

8. Cove-  
nant to  
pay rents.  
(See *ante*, p.  
170.)

9. Taxes.

assessments, and deductions whatsoever, (except the landlord's income tax, the land tax, and quit rents,) now or hereafter to be imposed upon or payable in respect of the said premises, or any part thereof; and also the additional yearly rent of 20*l.* for every acre, and so in proportion for any greater or less quantity than an acre of the said premises, which during such term shall be breast-ploughed or burnt, or in any other respect used, managed, or dealt with contrary to any of the stipulations for the cultivation of the said premises hereinafter contained, without previous license in writing from the lessor; such additional rent to be payable, without deduction as aforesaid, on such of the aforesaid quarterly days of payment in each year as shall happen next after the event in respect of which the same shall become payable as aforesaid, and thenceforth during the remainder of the said term; and the lessor shall have all like remedies, by distress or otherwise, for the recovery thereof, as are allowed by law for the recovery of the said annual rent of £ . And the said doth hereby, for himself, his heirs, executors, administrators, and assigns, respectively covenant with and to the said , his heirs, executors, administrators, and assigns, as follows: that is to say,

1st. That he will pay unto the said , his executors, administrators, or assigns, the said annual rent of £ , and likewise the said additional rent of 20*l.* an acre on all and every the contingencies aforesaid, in manner and at the respective times aforesaid. And also,

2nd. That he, the said , will pay all parliamentary, parochial, and other taxes, rates, tithe rent-charges, and assessments whatsoever, now or hereafter to be imposed or payable, in respect of the said premises or any part thereof, when and as the same shall respectively become payable (the land tax, quit rents, and landlord's income tax only excepted).

3rd. That the lessee shall and will, at all times

10. Repairs.  
(See *ante*, p.  
241.)

during the said term, at his costs and charges, well and sufficiently repair, amend, uphold, sustain, maintain, cleanse, scour, and keep in good habitable and tenantable repair, order, and condition, all the said messuages and houses, barns, stables, outhouses, and other buildings to the said demised buildings belonging, and all additions and improvements thereto, and all the walls, roofs, tiling, thatching, planks, joists, beams, windows, doors, door-posts, cupboards, floors, spouts, hedges, ditches, fences, gates, stiles, posts, rails, and pales, and other appurtenances of and belonging to the said premises, or which shall hereafter be set up or added thereto during the said term, in, by, and with all needful, proper, and necessary reparations, amendments, cleansings, and scourings whatsoever, both inside and outside. And at the end or

11. To quit.

other sooner determination of the said intended term, peaceably and quietly leave, surrender, and yield up the said demised premises, and every part thereof, farmed, managed, and cultivated according to the provisions hereinafter mentioned, and the course and practice of good husbandry in that behalf, as the same is best used and pursued, and without reference to the usage of the neighbourhood; and likewise so well and sufficiently repaired, upheld, maintained, scoured, cleansed, amended, and kept together, as aforesaid, with all new buildings, additions, and improvements whatsoever, which at any time during the continuance of the said term shall be erected, made, or set up upon the said demised premises, (inevitable accidents by tempest excepted). Provided that the lessor shall keep insured from fire the said buildings, in the respective sums in which they are now insured; and in the event of any of them being destroyed by fire then the lessor shall expend, in and towards re-instating the said buildings, all such sums as shall be obtained from the insurance office in which the same are insured, as soon as conveniently may be.

12. Land-  
lord to in-  
sure.  
(See *ante*, p.  
186.)

13. Notice  
of want of

4th. That after notice in writing given to the said

reparation. lessee, or left at the farm-house upon the said demised  
 (See ante, p. 242.) premises, by the lessor, or by his agents or surveyors in that behalf, of any particular defect or want of reparation as aforesaid in or about the said premises, the same shall be amended and repaired by the said lessee within two calendar months from such notice being so left as aforesaid.

14. To cultivate according to five-lain course (d). 5th. That the said premises shall be farmed, managed, and cultivated according to the most approved four or five lain course or system of husbandry, as set down in the first schedule hereunto annexed, opposite each field, that is to say: with respect to the five-lain course, that no less than two fifth parts of the arable land thereof shall be always in sown grass, and a two-years' ley, so as to be in proper preparation for wheat; and whatever part of the arable land thereof shall be ploughed or in tillage in any one year, not less than one third part of the land so ploughed or in tillage shall be in summer fallow or summer crops, well manured and duly worked in the proper season; and no two crops of white corn, nor any two crops whatever of the same kind, shall follow each other, or be taken in successive years from the same land; and with respect to the four-lain course not less than one-fourth of the arable land thereof shall be always in sown grass, and whatever part of the arable land thereof shall be ploughed or in tillage in any one year, not less than one third part of the land so ploughed or in tillage shall be in summer fallow or fallow crops, well manured, and duly worked in the proper season; no two crops of white corn nor any two crops whatever of the same kind shall follow each other or be taken in successive years from the same land. Provided that where any portion of land is fed off with turnips, and properly fallowed in the following year for wheat, then a crop of spring corn may be taken from such

15. Four-lain course.

16. Provision for taking two corn crops after turnip fallow

(d) For other culture covenants, see pp. 251, 275—294; Special

Precedents, p. 310 *et seq.*; and the precedents subsequent to this form.

and fallow (e).  
17. Artificial grasses.

land after the wheat; that neither on the four or five lain course shall any artificial grass upon the said premises be mown twice before it is again ploughed, except clover, cow grass, and saintfoin, and those only at proper and seasonable times; and all land sown with grass shall be sown with at least twelve pounds of best clover to the standard acre, and this along with the first crop after summer fallow or fallow crops.

18. Fodder crops and manure to be consumed on farm;

6th. That no straw, hay, clover, turnips, manure, dung, or fodder of any sort, which shall arise, grow, or be made on the said premises, or which shall be brought to or deposited thereon, in lieu of any hay or straw removed therefrom, shall be afterwards removed or carried away from or off the said premises, except such hay or straw as shall be removed under the provisions hereinafter mentioned; but that the same shall be spread and bestowed again on the said premises in a husbandlike manner.

19. Or manure to be led back.

7th. That within ten days after any hay or straw shall be removed or carried away from the said premises, two loads of good manure, or 40s. worth of some good and applicable artificial manure, shall be purchased, brought, and deposited upon the same for every load of hay or straw removed: Provided that, after notice in writing to the contrary shall have been given by the lessor to the lessee, no hay or straw whatever shall be removed from or off the said premises unless two loads of good manure shall have been, previously to any such removal, brought back and deposited on the said premises: Provided also, that the lessee shall tender to the lessor, or his agent or steward (if required), a monthly account in writing specifying correctly the full number of loads of hay or straw removed from or off the said premises or any part thereof, the places to which they have been removed, and the dates of each such removal,

(e) I find this provision in general use upon some of the light soils of Hampshire.

the number of loads of manure purchased, brought back, and deposited on the said premises in lieu thereof, the places where the same shall have been purchased and brought from, and the dates and places of each of such purchases and depositings on the said premises; and that the lessee shall be liable to pay a sum of 10*l.* as liquidated damages for every load of hay or straw removed from the said premises contrary to the terms and stipulations in this indenture mentioned.

20. No fodder to be removed during last two years of term.

8th. That no hay, straw, turnips, or other fodder crops whatever, shall be removed or carried away from or off the said premises after such two years' notice as aforesaid to determine the said term shall have been given by either of the said parties, nor at any time during the two years next preceding the end or other sooner determination of the said term, under the like penalty of 10*l.* per load removed.

21. That the average weight of sheep and other cattle be kept during the last two years.

That the average number and weight of sheep and other cattle, which the lessee has kept on the said premises during the last previous four years of his occupation of the said farm, shall be kept and fed on the said premises during the whole of the last two years.

22. Not to do waste. (See *ante*, p. 184.)

9th. That the lessee shall not suffer, do, or commit any waste in and upon the said demised premises, break up, plough, sow, or convert into tillage, garden, or hop grounds, any of the meadow or old pasture land, sow more than seven acres in any one year with potatoes and flax; fell, lop, or cut any of the hedge-rows or pollards under nine or more than twelve years' growth; destroy or injure the game, or knowingly or wilfully suffer or permit the same to be destroyed or injured; steep any seed corn in arsenic, or adopt any other course of farm management whereby the game may be poisoned or otherwise destroyed or injured; allow any new foot-paths on the said farms to be opened, or any of the foot-paths convenient for the occupation of the said premises in the said parish to be stopped up, so far as he can prevent the same; or



do or suffer any other act or thing on the said premises contrary to the course and practice of good husbandry, and the maintenance of the good order and condition of the said farms; and that he will protect and save from injury the timber and timber-like trees, pollards, saplings, and young trees likely to become timber, under a penalty of 10*l.* as liquidated damages for every tree, pollard, or sapling wilfully cut, injured, or destroyed contrary to this lease, and that he will secure the hedgerows of more than a rod in width when cut with a good fence, and plant good thorns in the gaps of the hedges when required; that he will allow notices, summonses, actions, or other necessary or proper proceedings at law, to be given, taken, or instituted in his name, to or against any persons trespassing, or about to trespass, or come upon the said premises in pursuit of game or otherwise; the lessor fully indemnifying him for the same.

23. Not to assign.  
(See *ante*, p. 241.)

10th. That the said , his executors, administrators, or assigns, shall not underlet, transfer, assign, set over, or otherwise part with the possession of the said premises, or any part thereof, for all or any part of the said intended term, without the previous license and consent, in writing, of the said , his heirs, executors, administrators, or assigns, or other the person entitled to the immediate reversion of the said demised premises.

24. Outgoing and incoming regulations.  
(See *ante*, pp. 219, 226, 251, 362, 296.)

And, for the regulation of the relations between the offgoing and incoming tenant, during the last two years of the said term, or other sooner determination of the same, it is hereby covenanted and agreed, between the parties hereto, their respective heirs, executors, administrators, and assigns,

1st. That the incoming tenant, during the last year, shall have a power of entry on such parts of the said premises, on the 1st day of January in the said last year, and at such other time or times, and in manner and according to the before-mentioned courses of husbandry, to spread the manure on the land, and to

summer fallow and prepare the same for wheat and turnips, and for sowing grass seeds with the Lent corn of the offgoing tenant; and that for this last-mentioned purpose the offgoing tenant shall give reasonable notice to the landlord, or to the incoming tenant on his behalf, previous to sowing his Lent corn (*f*), and the landlord, or his incoming tenant, shall thereupon be prepared to sow his grass seeds, so that the corn crop of the offgoing tenant may not thereby be injured.

2nd. For the offgoing tenant to harrow into the land, in a proper and husbandlike manner, all such grass seeds as are sown as aforesaid with the Lent corn, and engaging not to feed the same at any time after the harvest of such last year, he being allowed 2s. per acre, as an equivalent for not feeding the same, by the incoming tenant.

3rd. That the offgoing tenant shall lay up, in some convenient place and in a convenient manner, on the said premises, all the dung and manure arising from the straw of the last two harvests, for the use of the incoming tenant; and that the incoming tenant shall have the option of taking any hay belonging to the offgoing tenant which may remain unconsumed, at a fair feeding price, to be determined by valuation, as hereinafter provided.

4th. That the offgoing tenant shall have the use of the barns and outbuildings, and half the farm-house of Hinton, together with one of the stables (but not the other), and also the small paddock called The Home Meadow, and numbered in the plan 528, for the purpose of foddering his cattle, until the 1st day of May next after the end or other sooner determination of the said term and the said buildings, for the purpose of threshing out his corn and consuming his fodder.

5th. That the lessee, at the expiration or other determination of this lease, shall receive as outgoing allowances for all acts of husbandry of which the land-

(*f*) See *Hughes v. Richman*,  
Cowp. 125, as to the necessity of

providing for notice to the landlord  
of sowing Lent corn.

lord or succeeding tenant shall receive the entire benefit, each sum as two valuers, one to be chosen by the lessor and the other by the lessee, shall determine; and in case either party should, after one week's notice in writing, refuse or neglect to appoint a valuer, then the valuer appointed by the other party shall alone determine the sum so to be paid: but in case the two valuers should disagree, then the sum so to be paid shall be determined by an umpire to be named by the two valuers before they commence their valuation (g).

And that the lessee shall also receive for all artificial manures and permanent improvements, &c. [If there be any covenant for compensation for permanent improvements, adopt from forms at p. 297 et seq., or from the succeeding form of lease.]

25. Lessee's rights and obligations at entry to be the same as provided for his successor.

6th. That the lessee shall have the same right of pre-entry previous to the commencement of the term hereby granted, and shall allow to the preceding tenant the same conveniences for threshing out corn and consuming his fodder, and shall immediately upon his entry upon the said demised premises pay to the preceding outgoing tenant the same allowances as the said lessee is at the end of the term to allow and receive, according to the stipulations before mentioned.

26 Lessor to allow timber, bricks, tiles, &c.

And the said doth also covenant with the said , his executors, administrators, and assigns, to allow to the lessee, after twenty-one days' notice in writing from him that he requires the same, a sufficient quantity of rough timber, bricks, tiles, and lime, within five miles of the said premises, for the said repairs of the same, the transit thereof to the said premises to be at the costs and charges of the lessee.

27. Breaches of covenants, &c., not to be waived.

Provided also, that neither receipts for rent, nor any license or permission to commit any breaches of the covenants, stipulations, or conditions to be given at any time by the lessor, shall be any waiver of any antecedent breaches or of any penalties for such breaches.

(g) More elaborate provisions for valuation and arbitrations will be

found in the immediately succeeding precedent.

28. Lessor  
may resume  
certain  
lands.

Provided always, that if the said lessor shall, at any time during such intended term be desirous to occupy and possess again for the use of himself or of any of his family residing and occupying Hinton Lodge, all or any part of the fields, called the Eighteen Acres and Coppice Field, numbered 457, and Dean Fields, Black Acre, numbered 456, with the dells included therein, and of such his intention shall give to the said , his executors, administrators, or assigns, two years' notice in writing, ending at Michaelmas, in any one year, requiring him or them to quit or deliver up all or any part of the last-mentioned premises, then and in that case the said , his executors, administrators, and assigns, shall peaceably and quietly, at such Michaelmas day, deliver up such parts of such last-mentioned premises, and shall accordingly be allowed, from the said rent of 210*l.* per annum, the apportioned rent for each field in the said second schedule specified, according to the quantity given up, and all the provisions herein contained in reference to the course of husbandry at the end or other sooner determination of the said intended lease, and the relations of offgoing and incoming tenants shall, so far as the same are applicable, be in force in reference to such part of the said premises so given up as last aforesaid, but that this lease, so far as the same relates to the residue of the said premises, shall not be affected thereby.

29. Provision  
for re-entry.  
(See ante, p.  
232, 243.)

Provided always, that if the lessee shall not within twenty-one days after a notice in writing shall have been given to him, or left at the farm house upon the said premises, signed by the lessor or his agent, requiring the payment of any of the said rent of £ per annum, or of any of the said additional rents hereby reserved, which shall be then due from the tenant for or by reason of any of the respective covenants aforesaid, or other the terms or conditions on which the said premises shall be held or occupied, or if any of the rates, charges, assess-

ments, tithes, tithe rent-charges, or other taxes, parliamentary or parochial, which now are or hereafter may be imposed upon the said premises, shall be or remain unpaid, or if the lessor shall assign, underlet, or part with the possession of any part of the said premises contrary to the conditions hereinbefore mentioned, or shall become or be declared bankrupt or insolvent within any of the statutes now or hereafter to be in force concerning bankrupts or insolvents, or shall make any assignment for the benefit of or composition with his creditors, or shall mortgage or deposit this lease, or shall suffer execution, or extent, or if the said term, or any the interest of the said lessee of and in the said demised premises, or any part thereof, shall be seized or taken in execution under any process whatever, for any debt or demand due from or owing by the said tenant, or if the said lessee shall do or suffer any other act by which the said premises shall or may be affected, or shall refuse or neglect to repair the said premises within two months after notice to that effect under the provisions hereinbefore mentioned shall have been given, or left at the farm house upon the said premises as aforesaid, or shall make default in the performance of all or any of the covenants or stipulations hereinbefore mentioned, then and in either of those cases it shall be lawful for the lessor to determine and make void this lease and the term thereby granted, and also forthwith to enter in and upon the said demised premises or any part thereof, and therefrom to expel, put out, and amove the said lessee without any previous action of ejectment as effectually as a sheriff or his officer might do under a writ of possession founded on a previous judgment of ejectment, and to plead this lease as a bar to any action for such entry or expulsion.

30. [Another proviso.]

[If it is intended that this proviso shall be especially stringent, it will be well to follow the form in *Kavanagh v. Gudge*, 1 D. & L. 928, which would run thus:—Provided always that if any rent or rents by

this lease reserved or made payable shall be unpaid on any day on which the same shall become due, and for ten days afterwards, or if the lessee shall not at all times observe and keep the several covenants, conditions, provisoes, and agreements hereinbefore mentioned, or shall not quit and deliver up possession of the premises hereby demised at the end of the term by this lease granted, or at the expiration of the notice hereinbefore mentioned, or at any other determination of the said lease, then or in either of the said cases without any demand whatever, it shall be lawful for the landlord and his agents, or any person or persons whatsoever acting in his or their behalf, immediately to enter upon and take possession of the said premises hereby demised, and the lessee and all persons claiming under him for ever to expel and remove therefrom, without any legal process whatsoever, and as effectually as any sheriff might do in case the said lessor had obtained judgment in ejectment for the recovery of possession thereof, and a writ of *haberi facias possessionem* or other process had issued on such judgment directed to such sheriff in due form of law; and that in case of such entry, and of any action being brought, or other proceedings taken for the same by any person whomsoever, the lessor or the defendant or defendants in such action or other proceedings may plead leave and licence, in bar thereof, and this lease may be used as conclusive evidence of the leave and licence of the lessee, or of any plaintiff or plaintiffs in such action or other proceedings, to the said lessor and to all persons acting therein by his or their order for the entry or trespasses, or other matters to be complained of in such action or other proceedings.]

31. Exclusion of customs of the country. (See *ante*, p. 125.)

Provided also, that no local usage or custom of the country shall have any effect upon the tenancy created under this lease, but that the rights and obligations of the parties hereto shall depend only upon the terms of this indenture, and upon the general law.

32. Interpretation.

And lastly, the respective parties to this indenture

do hereby declare that wherever the word lessee shall occur in this lease the same shall be construed to extend not only to the said                      but to all and every his heirs, executors, administrators, and assigns, and the word lessor shall extend not only to the said                      but to his heirs, executors, administrators, and assigns, or other the person intituled to the immediate reversion of the said premises.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

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The Schedule above referred to.

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FORM OF LEASE NO. 2.

*Lease for Twenty-one Years, with Provisions expressly adapted to the Protection of the Lessee.*

*Tenant to expend moneys in improvements—put in repair farm buildings—erect new buildings and drain: to forfeit his lease if he persist in cultivating in a manner which arbitrators shall decide to be injurious.*

*Landlord to allow tenant to remove machinery—to purchase fixtures at a valuation, or to allow tenant to remove them.*

*Special covenant that tenant's representatives may assign lease if landlord refuses to purchase it at arbitration price. Special covenants as to arbitration, and as to outgoing valuations.*

*No reservation of game.*

Parties.

THIS INDENTURE (*h*), made the 1st day of January, 1850, between A. B. of the one part, and C. D. of the other part, witnesseth, that in consideration of the rent hereinafter reserved, and of the covenants hereinafter contained on the part of the said C. D., the said A. B. doth grant and lease unto the said C. D., all that farmhouse, with the outhouse, edifices, buildings, lands, and hereditaments to the same belonging, situate in the parish of , and also the several closes, pieces, or parcels of land and premises in aforesaid, particularly described in the plans annexed to these presents, and therein marked respectively A. and B., the plan marked A. being the plan of the farm in its present state, and the plan marked B. being the plan of the farm as it is proposed that the same shall be altered by a different division of the closes, which said farm and premises contain by estimation 225 a. 3 r. 30 p. or thereabouts.

Parcels.

Exceptions.

Except and always reserved, out of the lease hereby made unto the person or persons for the time being entitled to the reversion in the premises, all timber and other trees and saplings whatsoever now being, or which shall be in or upon the said premises; and also all mines and minerals, with free liberty of ingress, egress, and regress to and for the person or persons for the time being entitled to the reversion aforesaid, and his and their agents, servants, and workmen at seasonable times, and with or without horses, carts, and carriages, into, upon, and from the said premises, to view, fell, cut down, hew, and carry away the said excepted trees and saplings, and to work the said mines, and carry away and dispose of the said minerals, such person or persons entitled to the reversion aforesaid doing as little damage as possible, and paying compensation to the said

(*h*) This form is taken from a lease granted by the owner of estates in Gloucestershire to an experimental farmer of considerable capital and well-known skill. To no

other kind of tenant could such a lease be safely granted. The draft was prepared with great care, and was the result of much negotiation.



C. D., his executors or administrators, to be settled by arbitration in manner hereinafter provided: To have and to hold the premises hereby granted and leased, with their appurtenances, unto the said C. D., his executors and administrators, for the term of twenty-one years, to be computed from the 25th day of March, 18 : Yielding and paying therefor yearly and every year the rent or sum of £ by equal half-yearly payments on the day of and the day of in each of the first years of the said term, and by equal quarterly payments on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March, in the last year of the said term. And the said C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his heirs and assigns, in manner following, (that is to say): that he the said C. D., his executors or administrators, shall and will, within seven years from the date of these presents, lay out and expend, over and above the cost of any steam engine or machinery he may put up, the sum of £ in buildings, improvements, and drainage upon the said farm and premises, in such manner as to the said C. D., his executors or administrators, shall seem most advantageous, the new buildings to be of brick or stone, with roofs of tile or slate, and of a good and substantial nature, and such drainage to be effected by means of underground drains of stone pipes or tiles, or other materials of an equally durable nature: And also that he the said C. D., his executors or administrators, shall and will forthwith put into good and substantial repair all the buildings and erections now standing and being upon the said premises: And also that he the said C. D., his executors or administrators, shall and will from time to time, during the said term, pay or cause to be paid the said yearly rent hereinbefore reserved, at the times hereby appointed for payment of the same; and also all taxes, rates, payments, and assessments whatsoever, to grow

**Habendum.**

**Redden-**  
**dum.**

**TENANT'S**  
**COVENANTS.**  
—

**To erect**  
**buildings**

**and drain,**

**and put in**  
**repair ex-**  
**isting build-**  
**ings;**

**to pay rent**  
**and taxes;**

to keep in  
repair farm-  
house, scour  
ditches, &c.

To leave  
premises in  
repair at  
end of term.

Power to  
landlord to  
enter to  
view.

CULTURE  
COVENANTS.

due in respect of the said premises (except the land-tax and tithe rent-charge, quit-rents, landlord's property tax and any other landlord's tax which may by law be hereafter imposed, payable in respect of the said premises): and shall and will, from time to time and at all times during the continuance of the said term, subject nevertheless to the covenant for the providing of sawn timber and materials hereinafter contained, at his and their own costs and charges, well and sufficiently keep in repair, support, maintain, scour, cleanse, and keep the said farm house and all other the edifices and buildings hereby granted and leased, and all the bridges, gates, posts, pales, rails, and fences, watercourses, dykes, drains, ditches, and appurtenances now belonging, or which at any time during the term hereby granted shall belong to the said farm and premises, and any new buildings which may be erected upon the said premises, in, by, and with all manner of needful and necessary reparations and amendments whatsoever, except in respect of damage by fire, which is specially provided for by the covenant for insurance hereinafter contained; and all and singular the said farm and premises being so well and sufficiently repaired, supported, maintained, scoured, cleansed, and kept, shall and will at the end or other sooner determination of the said term hereby granted, peaceably yield, surrender, and give up to the person or persons for the time being entitled to the reversion of the said farm and premises, immediately expectant on the determination of the said term: And also that it shall be lawful for the said A. B., his heirs and assigns, and his and their agents or other persons duly authorized by him or them, once in every six calendar months, during the continuance of the said term hereby granted, to enter or come into and upon the said premises, or any part thereof, to view and see the state and condition of the same: And also that he the said C. D., his executors or administrators, shall and will, within three years from the date of these presents, sow with grass seeds and

To seed  
down cer-  
tain lands.

Not to  
plough up  
old grass  
except, &c.

To expend  
manure on  
farm.

Provisions  
in case of  
sale of hay,  
straw, or  
green crops.

To cultivate

lay down for pasture those parts of the closes numbered 614 and 642 upon the said plan marked A, which are coloured green upon the said plan marked B. And also that he the said C. D., his executors or administrators, shall not nor will at any time during the said term, plough up or convert into tillage, or cause or suffer to be ploughed up or converted into tillage, any part of the present meadow or pasture land, without the consent of the said A. B., his heirs and assigns, under his hand first had and obtained, excepting, nevertheless, such portions of the said meadow or pasture land as are hereinafter particularly authorized to be broken up. And also that the said C. D., his executors or administrators, shall and will at seasonable times and in a husbandlike manner, lay and spread all the manure and muck which shall be made upon the said premises during the said term, upon such parts of the said premises as shall most require the same. And also that if any hay, straw, or green crops shall at any time during the said term be sold or removed from the said farm, then, and in such case, and so often as the same shall happen, he the said C. D., his executors or administrators, shall and will, within the space of two years from the time of such sale or removal, if such sale or removal shall take place more than two years before the expiration of the said term, or if not, then before the expiration of the said term, at his and their own costs and charges, either bring to the said farm and premises, and lay and spread thereon, so much manure as shall be equivalent to the manure which would have been produced if such hay, straw, and green crops had been consumed upon the said farm and premises, or, at the like costs and charges, provide and cause to be consumed upon the said farm and premises, so much oil cake, corn, or other fodder, as shall produce manure equivalent to that which would have been made if the hay, straw, and green crops, so sold or removed as aforesaid, had been consumed on the said farm and premises. And also that he the said C. D., his exe-

farm in a proper manner.

Not to assign except, &c.

Insurance.

LANDLORD'S COVENANTS.

To find timber, &c., for repairs.

cutors or administrators, shall and will keep the said farm and lands free from weeds, and in good tilth and condition; and well and properly stock, cultivate, manure, and manage the same in a fair and proper manner, and so leave the same at the end, or other sooner determination of the said term (i). And also that he the said C. D., shall not nor will assign or underlet, or otherwise part with the possession of the said premises, or any part thereof, except cottages, with the gardens and orchards attached, and except also small lots of land for growing potatoes and other vegetables, and small lots of land not to exceed in the whole six acres, without the consent, in writing, of the said A. B., his heirs or assigns, for that purpose under his hand first had and obtained. And also that he the said C. D., his executors or administrators, shall and will keep the said farm house and all other buildings and erections from time to time standing and being upon the said premises, insured against loss or damage by fire, in such office as the said A. B., his heirs or assigns, shall approve, and shall and will, in the event of such buildings and erections, or any of them, being destroyed or damaged by fire or other accident, forthwith lay out the money to be received from such insurance in rebuilding and reinstating the same, under the direction of the surveyor of the said A. B., his heirs and assigns, and shall and will, when required, produce the policy of such insurance and the current year's receipt for the premium thereon, to the said A. B., his heirs, and assigns. And the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., his heirs and assigns, shall and will find and provide sawn timber and all other materials necessary for the repairs of the said farm house, buildings, and erections which shall become necessary at any time during the

(i) See a similar stipulation, *ante*, p. 250: the words "fair and proper manner" would probably be inter-

preted by the custom of the country, unless specially excluded.

To allow  
tenant to  
remove ma-  
chinery.

To purchase  
fixtures at a  
valuation,  
&c.

To allow  
tenant to  
break up  
certain  
grass lands,

and to take  
down old  
buildings.

To pay te-  
nant out-  
going allow-  
ances  
for acts of  
husbandry  
done during

said term, after the same shall have been put into good and substantial repair, in pursuance of the covenant for that purpose, on the part of the said C. D., hereinbefore contained. And also that in case the said C. D., his executors or administrators, shall at any time during the said term erect upon any part of the said premises any machinery which a tenant would not be entitled by law to remove, he the said C. D., shall, at the expiration or other sooner determination of the term hereby granted, be at liberty to remove the same. And also that he the said A. B., his heirs or assigns, shall and will, at the expiration or other sooner determination of the said term, purchase, at a valuation to be made by arbitration in manner hereinafter provided, the fixtures specified in the schedule annexed to these presents, which fixtures the said C. D., his executors and administrators, shall be at liberty from time to time, during the said term, to remove from the places which they now occupy, and to erect in such other places on the premises hereby demised, as he may think proper, making good any damage caused to the said fixtures or to the said premises by such removal. And also that it shall be lawful for the said C. D., his executors or administrators, to break up and convert into tillage the closes of meadow land next hereinafter particularly mentioned (that is to say), the closes coloured green upon the said plan marked A. numbered respectively 604, 613, 616, 617, 618, 619, 622, 625, 626, 632 and 634, and also such parts of the closes coloured green upon the said plan marked A. numbered respectively 603, 606, 607, 612, 640, 646, 647 and 650, and also such closes as are coloured brown upon the said plan marked B. And also that it shall be lawful for the said C. D., his executors and administrators, to take down the old cowsheds now standing on numbers 608 and 639. And also the thatched waggon house and the shed adjoining and the pigsties and privy adjoining. And also that the said A. B., his heirs or assigns, shall and will, at the expiration or other sooner determination of the said term, pay the said C. D., his executors or

last two  
years, and  
unexhaust-  
ed manures  
and hay and  
straw.

Tenant to  
retain con-  
venience for  
consuming  
straw, &c.

Tenant's  
represent-  
atives may  
assign lease,  
&c.

Provisoes in  
case of  
bankruptcy.

administrators, at a price to be fixed by arbitration in manner hereinafter provided, for all acts of husbandry done by the said C. D., at any time during the two years preceding the determination of the said term, the effect of which shall remain for the benefit of the incoming tenant, and for all unexhausted and unconsumed manure, and at the value for consumption on the premises for all such hay, straw, and fodder as the said C. D., his executors or administrators, shall from any cause other than his own default be unable to consume within the period of two months after the determination of the said term. And also that it shall be lawful for the said C. D., his executors or administrators, to have the use of part of the farm yard for the space of two calendar months after the determination of the said term, for the purpose of enabling the said C. D. his executors or administrators, to consume the hay, straw, and fodder then remaining unconsumed upon the said premises. And also that in the event of the death of the said C. D., during the term hereby granted, it shall be lawful for the executors or administrators of the said C. D. to sell and assign the term hereby granted to such person or persons as they shall think fit, provided such executors or administrators shall in the first instance have offered to the said A. B., his heirs or assigns, the option of purchasing the said term at a price to be fixed by arbitration in manner hereinafter provided, and the said A. B., his heirs or assigns, shall have refused to purchase the same: Provided always that, notwithstanding any such assignment by the executors or administrators of the said C. D., such consent as aforesaid of the said A. B., his heirs or assigns, shall be requisite for any assignment subsequent to such assignment by the executors or administrators of the said C. D.: Provided always that if the said C. D., his executors, administrators, or any person or persons holding the said premises under or by virtue of an assignment from such executors or administrators (k), shall

(k) See *Weatherall v. Gearing*, 12 Ves. 511.

or persisting  
in cultivation  
declared to be  
injurious by  
arbitrators;

or non-  
payment of  
damages.

Disputes as  
to cultivation  
to be  
referred to  
arbitration.  
(See p. 228,  
*ante*).

become bankrupt, or shall take the benefit of any Act or Acts of Parliament for the relief of insolvent debtors, or shall permit any portion of the live or dead stock for the time being remaining on the said premises to be taken in execution by process of law, or if the said C. D., his executors or administrators or any person or persons holding the said premises under or by virtue of an assignment from the said executors or administrators, shall persist in cultivating the said farm in any manner which, by the award of any arbitrators or umpire made by virtue of these presents, shall be adjudged to be injurious to the farm, or if the said C. D., his executors or administrators, or any person or persons holding the said premises under or by virtue of any assignment from such executors or administrators, shall not, within six months after the same are ascertained, pay any damages which may be ordered to be paid by the award of any arbitrators or umpire made by virtue of these presents, or if the rent hereby reserved, or any part thereof, shall be in arrear and unpaid for the space of sixty days after the times hereby appointed for payment thereof, the same having been demanded, by a demand in writing, left at the farm-house, at or at any time after the expiration of the said sixty days, then and in any of the aforesaid cases it shall be lawful for the said A. B., his heirs and assigns, into the premises hereby granted and leased, or any part thereof in the name of the whole, to re-enter and the same to have again, re-possess, and enjoy as in their former estate, anything hereinbefore contained to the contrary notwithstanding: Provided always, and it is hereby agreed and declared between and by the parties to these presents, for themselves respectively, and their respective heirs, executors, and administrators, that if at any time or times during the said term hereby granted, any dispute shall arise between the said A. B., his heirs and assigns, and the said C. D., or his executors, administrators, or assigns, concerning any of the covenants relating to the

Special provisions as to arbitration.

cultivation of the said farm, the same shall be referred to the award or arbitration of two persons, one of whom shall be named by each of the said parties in difference, for which purpose it shall be competent for any of the parties in difference to state in writing, signed by his or their hand or hands, the subject in difference, and his or their requisition to have the same settled by arbitration, and the name of the person appointed by him or them to act in the said arbitration, and to deliver the said writing to the other or others of the parties in difference, or to leave the same at his or their last or most usual place of abode, and the other party or parties in difference shall, within one calendar month after such writing shall have been so delivered or left, appoint the other person to act in the said arbitration, and shall deliver the name of such person in writing to the other party or parties, or leave the same at his or their last or most usual place or places of abode; and thereupon the said arbitrators shall, with all convenient speed, proceed to the determination of the matter in dispute, and either immediately appoint some third person to act as umpire in case of difference, or shall wait till such difference takes place, and then proceed to the choice of such umpire, and the said arbitrators or umpire, as the case may be, shall, if they think proper, require the parties to enter into such bonds or agreements for submission to the said award or umpirage, and to make the said bonds or agreements for submission a rule of any Court of law or equity, as he or they shall deem expedient; and the said bonds or agreements for submission shall be executed and made a rule of Court as soon after the same shall be required as can be conveniently done, and the award of such arbitrators (if made in writing, under hand and seal) shall be delivered to the parties in difference within forty days after such dispute shall be referred to them, or in default thereof, the award of such umpire under hand and seal, shall be delivered to the parties in difference within sixty days after the same



shall be appointed, and shall be binding and conclusive on all the parties, their respective heirs, executors, or administrators; and all damages shall be paid, and all such other acts, deeds, payments, matters, and things forthwith had, made, done, and executed, as shall be ordered by the said award or umpirage; and it is hereby further agreed and declared that in case either of the said parties in difference shall neglect or refuse, by the space of one calendar month after such requisition shall be so given, or left as aforesaid, to name an arbitrator to act on his or their part or parts, as hereinbefore is mentioned, then and in every such case it shall be lawful for the arbitrator chosen by the party giving or delivering such requisition and naming an arbitrator as hereinbefore is mentioned, by any writing under his hand to name a person to act as arbitrator on the part of the person or persons so refusing or neglecting as hereinbefore is mentioned; and the person so nominated shall be competent and qualified to act in the said arbitration to all effects, intents, constructions, and purposes as if he had been regularly nominated and appointed by the person or persons refusing or neglecting as aforesaid: and further that the said parties in difference shall and will produce and show forth to the said arbitrators and umpire all such deeds, evidences, and writings relative to the premises in question as shall be in the possession or power of him or them respectively, or of any other person or persons under their or his influence or control, so that the said arbitrators and umpire may examine, inspect, and peruse the same for the purpose of enabling them and him to make the said award or umpirage, and shall and will, as far as lies in their or his power, furnish the said arbitrators and umpire with such other proofs and documents, and do all such other acts and things for better enabling them and him to make the said award or umpirage, as the said arbitrators and umpire shall require: And that the said arbitrators and umpire shall, for the purpose

Rule of  
valuation  
of outgoing  
allowances.

of enabling them and him to make the said award or umpirage, be at liberty to go into parol as well as written evidence, and to examine the said parties in difference, or any of them, and such other witnesses as they or he shall think proper, on oath or affirmation; and that all costs and charges attending the said arbitration shall be in the discretion of the said arbitrators or umpire, as the case may be, and shall be paid and satisfied pursuant to the award, and that neither of the said parties in difference will or shall bring any action or suit against the other of them in relation to any matter hereby agreed to be settled by arbitration under these presents: And it is hereby declared, that the said arbitrators may select an umpire, either by lot, or in such other manner as shall to them seem fit, and that in case the said arbitrators shall agree upon any portion of the matters in dispute, but disagree upon the remainder, it shall be lawful for the said arbitrators to make an award in respect of so much of the matters in dispute as they can agree upon, and to leave the residue of such matters to be decided by the umpire: And it is hereby agreed, that in estimating the amount to be paid to the said C. D., his executors or administrators, as hereinbefore is mentioned, for fixtures, acts of husbandry, unexhausted or unconsumed manure, hay, straw, or fodder, it shall be lawful for the arbitrators or umpire to take into consideration the state of the farm, and to estimate the damage, if any, which may have arisen at any time within the period of two years preceding the expiration of the term hereby granted, from the farm not having been well and properly stocked, cultivated, manured, and managed, or not being free from weeds and in good tilth and condition, or by reason of there having been an undue proportion of the land in corn, to the injury of the succeeding occupier, or by reason of the breach within the aforesaid period of two years of any or either of the lessee's covenants, and the amount of such damage shall be deducted from the

For quiet  
enjoyment.

amount payable to the said C. D., his executors or administrators, in respect of the said fixtures and other materials last aforesaid; and if such damages amount to more than the sum payable to the said C. D., his executors or administrators, in respect of the said fixtures and other matters aforesaid, the said C. D., his executors or administrators, shall not be entitled to any payment in respect of such fixtures and other matters aforesaid, but shall pay to the said A. B., his heirs or assigns, the amount of such damages, after deducting the sum due in respect of such fixtures and other matters aforesaid. And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he and they, performing and observing all the covenants hereinbefore contained, may hold and enjoy the said premises during the said term without any interruption by the said A. B., his heirs or assigns, or any person lawfully claiming under him, them, or any of them. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

#### The Schedule referred to.

In the hall . . .	One grate, with ash-pit.
„ parlour . . .	do. do.
„ office . . .	do. do.
„ kitchen . . .	One cooking range, with ash-pit.
„ „ . . .	One clamp kiln.
„ „ . . .	One dresser, and shelves.
„ bedrooms . . .	Four grates.
„ scullery . . .	Two large furnaces.
„ „ . . .	One smaller do.
„ court . . .	One lead pump, with stop-cocks and pipes attached.
„ court and washhouse }	Stop-cocks and pipes in connection with cistern.
„ pantry . . .	Dresser and shelves.
„ cheese room . . .	do do. and cheese shelves.
„ dairy . . .	Cheese shelves.
In the offices of the dwelling house, late in the occupation of William Collard }	One large furnace.
	Two smaller ditto.

## FORM OF LEASE No. 3.

*Lease for Eight Years, with Provisions as to stocking and managing Down Land—Sheep Folding—and Water Meadows.*

[*The following form is one adapted to the customs of Wiltshire, and applicable to the Down farms of that county. The covenants are very elaborately drawn, and may at the discretion of the draftsman be exchanged for the more curt forms to be found in other precedents. The culture covenants were settled by the Messrs. Attwood, of Salisbury. —Upon the subject of Wiltshire leases, I subjoin an extract from Mr. Davis's work on the agriculture of this county.*]

“The indispensable necessity of an obligation on a tenant to pursue a regular course of husbandry on a Wiltshire Down farm is a reason why farms should never be let without leases in this district. In many counties, leases are understood to be necessary only for the security of the tenant ; but here they are absolutely requisite for the security of the landlord.

“The term of years to be granted by a lease should be so calculated as to bring all the land, or as much as possible, round in succession a certain number of times ; so that the tenant may have just as many complete years' produce as he pays years' rent ; and (supposing him to begin right) to leave the farm exactly in the state in which he entered upon it. The term should therefore be the most divisible into the several periods of sowing the different kinds of land. From an attachment to the common-field custom, most farmers expect to have liberty to sow some of their lowest and strongest lands with wheat every third year, and the lighter and more exposed parts every fourth ; it is, however, now pretty generally allowed by the best farmers in this district, that corn should not be considered their principal dependance ; wheat is therefore sown less frequently in even their strongest lands, nor are two white-straw crops sown in succession. But the whole farm, and particularly the hill lands, are applied to a system of husbandry which, whilst it produces abundant food for stock, so as to enable the tenant to winter the whole of his sheep at home, (formerly not attempted in this district,) at the same time, by a well regulated process in the consump-

tion of this winter food, manures his land in course for corn, without purchase or even carriage of dung, and thereby ensures him a regular quantity of grain upon two-thirds of the land heretofore applied to the growth of it. And, as surveyors and land-agents have found lands under their care much improved by this course of cropping, covenants have been introduced in modern leases, binding the tenants to a due observance of it. In the old burnbeak lands, and the hill arable in general, wheat is not sown more than once in six years.

“The usual terms for which leases are granted in this district, are sometimes seven years, oftener fourteen, now and then twenty-one; but of late a term of twelve years has been thought the most eligible, as being more divisible into a regular course of sowing the arable land; and, considering the disadvantages under which a Wiltshire Down farm is too often entered upon, the term of a lease should never be less than twelve years. He must be a good farmer indeed, or have very good luck, who (on lands fairly rented) can do more than save his own in the first four years of his term.

“The tenant is bound to sow his lands in the course limited by the lease; to keep up a full flock of sheep, and fold them in due course of husbandry on some part of the premises, but in the last year on such part as the landlord shall direct; to spend all hay, straw, &c., on the premises (long wheat-straw sometimes excepted); to spread all the dung on the premises, except the dung of the last year's crop, and (if a Lady-day bargain) the straw of the off-going crop, which are to be left at the disposal of the landlord.”

THIS INDENTURE, made the                      day of March, 18                      the year of our Lord, 18                      , between G. G., of                      , in the county of                      , of the one part ; and C. L., of                      , in the county of                      , of the other part ; Witnesseth, that in consideration of the rents, covenants, and agreements hereinafter reserved and continued on the part of the said C. L., his executors, administrators, and assigns, to be paid, observed, and performed, he, the said G. G., doth demise and lease unto the said C. L., his executors, administrators, and assigns,

2. *Parcels.* ALL that messuage or tenement, farm, lands, and other hereditaments, situate at G., in the county of Wilts, commonly called or known by the name of G. Farm, and containing in the whole, by admeasurement, 731 a. 3 r. 34 p. or thereabouts (be the same more or less), and the short particulars of which said farm and premises are specified in the schedule to these presents, and which said farm and premises are now in the occupation of the said C. L., his under-tenants or assigns. And also all ways, lights, easements, waters, watercourses, commons, common of pasture, common of turbary, profits, commodities, hereditaments, and appurtenances whatsoever to the said messuage, farm, lands, and premises belonging or in anywise appertaining.

3. *Exceptions. Trees, &c.*

EXCEPTED and always reserved unto the persons or person for the time being entitled to the reversion of the said premises, all and all manner of woods, groves, coppices and springs, and all timber, and timber-like and other trees, saplings, stemmers, and stool-sticks of oak, ash, and elm, and the branches, lops, and tops of the same, and all fruit trees (but not the fruit thereof), and all pollards and willows, and all other trees whatsoever, and all the underwood, thorns, bushes, and quicksets in, upon, or about the said premises (except the tops and lops of pollards, to be shrouded and lopped according to the covenant hereinafter contained in that behalf, and stubs and surplus thorns required for fixing, which may be taken by the said C. L., his executors, administrators, and assigns).

*Minerals, &c.*

AND ALSO except all mines, minerals, and quarries in, under, and upon the same premises, and also all the marle, clay, chalk, brick, earth, gravel, sand, and stones (otherwise than such as may be used for the benefit and improvement of the estate), under or upon the same premises or any part or parts thereof.

4. *Reservation of right of ingress to use reserved rights.*

WITH free liberty of ingress, egress, and regress to and for the person or persons entitled as aforesaid, their, his and her agents, servants and workmen, at all seasonable times in the year during the continu-

ance of this demise, with or without horses, carts, carriages, and all other necessary things into, upon, from, and out of all or any part or parts of the premises hereinbefore demised, to view, fall, cut down, hew, grub up, saw, convert, dig for, open, work, and carry away the said excepted woods, trees, mines, and other things respectively, or any part or parts thereof respectively; and also to graft, and plant and transplant trees, and sow tree seeds in or near the hedge-rows, borders, and waste places, and in the woods, groves, coppices, and springs of or belonging to the said premises, and to fence about and preserve the same from injury by cattle or otherwise, at their, his and her free will and pleasure, thereby doing as little damage as possible to the said C. L., his executors, administrators, and assigns.

Game.

AND ALSO excepted and always reserved unto the persons or person for the time being entitled as aforesaid, all manner of game, conies, fish, and wild fowl, with free liberty for them, him and her, and their, his and her servants, friends and acquaintances; and at all seasonable times in the year to hunt, hawk, fish, fowl, course, shoot, and sport upon or over the said premises hereby demised, or any part or parts thereof.

Entry to view.

AND full and free liberty of ingress, egress, and regress to and for them, him and her, and their, his and her agents, servants and workmen at all seasonable times in the years into, upon, from, and out of all or any part or parts of the said premises, to view the state and condition of the buildings thereon, and of the repairs hereinafter covenanted to be made by the said C. L., his executors, administrators, or assigns.

5. Reservation of right of free entry upon arable lands in last year of term.

AND ALSO excepted and reserved unto the persons or person for the time being entitled as aforesaid, and their, his and her succeeding tenant or tenants of the said premises, at all times after the respective days hereinafter specified, in the last year of this demise or the continuance thereof, the full, free, and uninterrupted possession, use, and enjoyment of the lands

hereinafter specified ; that is to say, of one twelfth part which shall have been three years unploughed of the arable lands marked (B) in the said schedule, from and after the 2nd day of February in such last year ; of one other twelfth part which shall have been previously cropped with rye and fed off green upon the land in such last year of the said arable lands marked (B) from and after the 4th day of May in such last year, of such of the lands as shall be in course to be sown with wheat, and shall be in two-years' lay after two successive white-straw crops, from and after the 24th day of June in such last year ; and of such of the said lands as shall be in course to be sown with wheat and shall be in one-year's lay after one white-straw crop so soon as the grass sown with such white-straw crop shall have been once cut and carried (such lands so to be possessed, used, and enjoyed, and in course to be sown with wheat as aforesaid, to be equal to at least one fourth part of the whole of the arable lands marked (A) in the said schedule, and to be of an average quality compared with the whole) ; with liberty for them, him and her, and their, his or her servants and workmen, with waggons, carts, horses, oxen, and all necessary implements of husbandry, at all times after the said days and times respectively, to enter into and upon such lands respectively, and to plough, harrow, and roll the same, and to carry and lay lime, dung, manure, or compost, and otherwise cultivate and prepare and sow the same as they or he shall think proper.

And to use  
manure,

AND for the purpose last aforesaid to carry out all or any part of the dung which shall then be in the yards or elsewhere about the demised premises.

and sow  
clover.

AND ALSO excepted and reserved unto the persons or person for the time being entitled as aforesaid, and their, his and her succeeding tenant or tenants of the said premises, and their or any of their servants and workmen, in due season, in the last year of this demise, full and free liberty to enter into and upon any part of the arable lands hereinbefore demised, and



there to sow a reasonable quantity of broad clover not exceeding eight lbs. per acre, or two bushels and a half of rye-grass seeds with the Lent corn, which shall be sown by the said C. L., his executors, administrators, or assigns upon the same premises.

Accommodation for servants and horses.

AND ALSO excepted and reserved unto the persons or person for the time being entitled as aforesaid, and their, his and her succeeding tenant or tenants of the said premises, convenient lodging room for their, his or her servants and workmen, and one moiety of the stallage for their, his, or her horses, and for the hay, straw, and provender for such horses; and also one moiety of the waggon-house and cart-sheds, for depositing the waggons, carts, and implements, during the time of such servants, workmen, horses, waggons, carts, and implements being employed in or about the cultivation of the said lands, so to be respectively entered upon as aforesaid: And also free liberty of ingress, egress, and regress for them, him and her, and their, his and her servants and workmen, horses, and carriages, or otherwise, to come, go, pass, and re-pass into, over, and upon and from the said demised premises, or any of them, or any part or parts thereof, at all seasonable times, for any reasonable cause or purpose whatsoever. To have and to hold the said farm-house, lands, tenements, and hereditaments, and their appurtenances and all other the premises hereinbefore demised, or intended so to be, unto the said C. L., his executors, administrators, and assigns, for the term of eight years (determinable, nevertheless, as hereinafter mentioned), to be computed from the 29th day of September now last past and thenceforth next ensuing, and fully to be complete and ended: Yielding and paying therefor, yearly and every year, during the continuance of the said term of eight years, the yearly rent or sum of 240*l.* of lawful money of the United Kingdom, by four equal quarterly payments, on the 25th day of December, the 25th day of March, the 24th day of June, and the 29th day of September in each year, without

6 Habendum.

7. Redden-dum.

any deduction or abatement whatsoever, for or in respect of any present or future taxes, rates, or other charges, other than and except the landlord's income or property tax (the land tax having been redeemed), and quit rents (if any such there be).

8. Additional rents.  
(See *ante*, p. 180.)

AND ALSO yielding and paying, yearly and every year, during the continuance of the said term, the additional yearly rent or sum of 10*l.* of like lawful money for every acre, and so in proportion for any greater or less quantity than an acre, of the meadow, pasture, or down land, one undivided moiety whereof is hereby demised as aforesaid, which shall be ploughed, dug, broken up, or converted into tillage or garden ground, contrary to and in breach of the covenant in that behalf hereinafter contained: And also yielding and paying, yearly and every year, during the continuance of the said term, the additional yearly rent or sum of 10*l.* of like lawful money for every acre, and so in proportion for a greater or less quantity than an acre, of any part or parts of the lands hereby demised as aforesaid, which shall be managed or cultivated in any manner contrary to the covenants for the cultivation thereof hereinafter contained, the said further rents of 10*l.* per acre to be respectively paid on the 29th day of September in every year in which the same shall happen to become payable, without any deduction or abatement whatsoever.

9. Proviso in case of breach. (See *ante*, p. 232.)

PROVIDED ALWAYS, nevertheless, and these presents are upon this express condition, that if the said yearly rent or sum of 240*l.*, the said additional rents hereinbefore reserved, or any or either of them, or any part thereof respectively, shall be in arrear for the space of thirty-one days next after the same respectively ought to be paid as aforesaid, and after a notice in writing requiring the payment thereof shall have been given to the said C. L., his executors, administrators, or assigns, or left upon some conspicuous part of the premises hereby demised as aforesaid; or if the said C. L., his executors or administrators, shall at any time or times, during the continuance of this demise,

transfer or assign over, or underlet, or attempt or agree to transfer or assign over, or underlet to any person or persons whomsoever, the said premises hereinbefore demised, or any part or parts thereof, for all or any part of the said term hereby granted, without the licence or consent in writing of the persons or person for the time being entitled to the reversion of the said premises for that purpose first had and obtained ; or if the said C. L., his executors, administrators, or assigns shall become bankrupt or bankrupts, or take the benefit of any Act or Acts of Parliament now in force, or hereafter to be passed for the relief of insolvent debtors, or shall compound his or their debts, or assign over his and their estate and effects for payment thereof, or any execution shall issue against him or them, or his or their effects, whereupon the said premises hereinbefore demised, or any part thereof, shall be taken, or attempted to be taken in execution ; or if the said C. L., his executors, administrators, or assigns, shall not from time to time, and at all times during the continuance of this demise, well and truly observe, perform, fulfil, and keep all and singular the covenants, conditions, and agreements which on his and their part are and ought to be observed, performed, fulfilled, and kept, according to the true intent and meaning of these presents : Then, and in every such case, and at all times thereafter, it shall be lawful for the persons or person for the time being entitled as aforesaid into the premises hereinbefore demised, or into any part thereof, in the name of the whole, wholly to enter, and the same to have, possess, and enjoy as if this lease had not been made, anything hereinbefore contained to the contrary thereof in anywise notwithstanding (1).

10. Covenants by tenant to pay rent.

AND the said C. L. doth, for himself, his heirs, executors, and administrators, covenant with the said G. G., their heirs and assigns, in manner following ;

(1) See the form of proviso for re-entry in the first form of lease ; and see also *ante*, p. 232.

(that is to say,) that he the said C. L., his heirs, executors, administrators, or assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the persons or person for the time being entitled to the reversion of the said premises hereby demised, expectant on the determination of the lease hereby made, the said yearly rent or sum of 240*l.*, and also the said additional rents hereinbefore reserved and made payable, at such days or times, and in such manner as is hereinbefore mentioned for payment of the same respectively, and according to the true intent of these presents.

**Taxes.**

AND ALSO shall and will well and truly pay, bear, and discharge all taxes, tithes, and rent-charge in lieu of tithes, rates, duties, and assessments whatsoever, (except the landlord's income or property tax, and land tax, and quit rents, if any,) either already taxed, charged, rated, assessed, or imposed, or at any time or times hereafter during the continuance of this demise to be taxed, charged, rated, assessed, or imposed upon the said yearly rent of 240*l.*, or upon the said additional yearly rents, or upon the said premises hereinbefore demised, or any of them, or any part or parts thereof, or upon the persons or person for the time being entitled to the reversion of the said premises in respect of the said premises as landlords or landlord thereof, by authority of parliament or otherwise.

**11. To repair.**

AND ALSO shall and will, at his and their own costs and charges, whether any notice shall be given for the reparation of the same or not, well and substantially uphold, repair and scour, cleanse, maintain and keep in order, the farm-house, cottages, and farm, and other buildings in or about the premises hereby demised as aforesaid, and all the glass windows, glazings and lead work, locks, keys, hinges, bolts, bars, fixtures, pumps, gates, gate-irons, stiles, pales, posts, rails, bridges, hedges, ditches, mounds, bounds, drains, under-ground drains, wells, roads, ways, water-courses, hatches, and inward and outward fences of

every kind, of or belonging to the premises hereinbefore demised, or any part or parts thereof, at all times during the continuance of this demise (such allowance of rough timber, stones, slates, bricks, tiles, lime, iron, sand, and other materials being from time to time made to him and them as is hereinafter covenanted to be made); and the said hereby demised premises being so well and sufficiently upholden, repaired, and maintained as aforesaid, shall and will peaceably and quietly leave, surrender, and yield up unto the persons or person for the time being entitled as aforesaid, at the end of the said term hereby granted, or on the sooner determination of this present demise, together with all such landlord's fixtures, materials, and things as now are, or shall at any time or times during the continuance of this demise, be set up or affixed within, upon, or about the said premises, or any part or parts thereof (reasonable use and wear thereof, and accidents by fire and tempest, only excepted).

12. Not to assign, &c.

AND ALSO that he the said C. L., his executors or administrators, or any of them, shall not, nor will at any time or times during the continuance of this demise, transfer, assign over, or underlet to any person or persons whomsoever the said premises hereinbefore demised, or any part or parts thereof, for all or any part of the said term, without the licence and consent in writing of the persons or person for the time being entitled to the reversion of the said premises, for that purpose first had and obtained.

13. Water meadows (m) and pastures.

AND ALSO that he the said C. L., his executors, administrators, and assigns, shall and will manage all the water meadows, and other pasture lands hereby

(m) Water meadows are very common in the southern district of this county. Forty years ago the breadth of land in water meadow in South Wiltshire was computed at 20,000 acres. They are of especial value to sheep farms, in that they provide grass for the sheep in March and April. The customary management of water meadows in Wilt-

shire is as follows. In the flowing meadows, this work is done, if possible, early enough in the autumn to have the whole meadow ready to catch the first floods after Michaelmas, the water being the first washing of the arable lands on the sides of the chalk hills, as well as of the dirt from the roads, is then thick and good. The length of this au-

demised according to the best rules of husbandry, so as that the same shall at all times during the continuance of this demise be in good order and condition, and no waste, spoil, or damage be committed thereon.

14. Not to plough up old turf.

AND ALSO shall not, nor will at any time or times during the continuance of this demise, plough, dig, break up, or convert into tillage or garden ground any part of the said premises specified in the said schedule to these presents, which is not therein specified to be arable or garden ground.

15. Sheep-folding.

AND ALSO that he the said C. L., his executors, administrators, and assigns, shall and will, at all times during the continuance of this demise, keep by night upon the said premises all the sheep and other cattle which shall have been depastured thereon in the daytime; and also shall and will, at all times during this demise, keep and constantly pen and fold on the said premises hereinbefore demised during the winter

tumna! watering cannot be precisely stated, as much depends upon situations and circumstances; but if water can be commanded in abundance, the custom is to give the meadows a "thorough good soaking at first," perhaps for a fortnight or three weeks, with an intermission of two or three days during that period; and sometimes for the space of two fortnights, allowing an interval of a week between them. The works are then made as dry as possible, to encourage the growth of the grass. This first soaking is to make the land sink and pitch close together: a circumstance of great consequence, not only to the quantity but to the quality of the grass, and particularly to encourage the shooting of new roots, which the grass is continually forming, to support the forced growth above.

While the grass grows freely, a fresh watering is not wanted; but as soon as it flags, the water must be repeated for a few days at a time; always keeping this fundamental

rule in view, "to make the meadows as dry as possible after every watering;" and to take off the water the moment any scum appears upon the land, which shows that it has already had water enough. Some meadows that will require the water for three weeks in October, and the two following months, will not perhaps bear it a week in February or March, and sometimes scarcely two days in April and May. In the catch-meadows, which are watered by springs, the great object is, to keep the works of them very dry between the intervals of watering; and as such situations are seldom affected by floods, and generally have too little water, it is necessary to make the most of the water by catching and sousing it as often as possible; and as the upper works of every pitch will be liable to get more water than those lower down, a longer time should be given to the latter, so as to make them as equal as possible.—Davis's Wiltshire.

seasons a flock of at least 450 sheep, and during the summer seasons a flock of at least 600 sheep (exclusive of lambs); and also shall and will, from and after the 4th day of May in the last year of this demise, or the continuance thereof, pen and fold the sheep so to be kept on the said premises as aforesaid, on such part or parts of the arable lands hereinbefore demised as shall lie and be in course for a wheat crop for the next ensuing year after the determination of this demise, at such times and in such wise as the reversioners or reversioner, or their, his, or her succeeding tenant or tenants of the said premises hereinbefore demised, shall think proper and direct, and according to the usual mode, custom, and practice of the country between the off-going and incoming tenant (n).

16. Rotation of crops. Four-field course.

AND ALSO shall and will at all times manage and cultivate the lands specified in the said schedule to be arable in a good, clean, and husbandlike manner, and cultivate and crop the same in due course and successive order as hereinafter mentioned, (that is to say,) as to the pieces of land marked (A) in the said schedule, the said C. L., his executors, administrators, and assigns, shall and will cultivate the same in four equal parts (exclusive of such part or parts as for the time being shall be in saintfoin as hereinafter is specified), and shall not nor will plant, sow, or crop with corn, pulse, or grain, more than two of such four equal parts in any one year (exclusive of the saintfoin as aforesaid), and so that no more than two crops of corn, grain, or pulse (and one only of which shall be wheat) shall be had or taken in succession from off the same lands or any part or parts thereof; and also shall and will with every second of such crops (except

(n) The inconvenience of this reference to the custom of the country may be judged by recourse to Mr. Davis's "General View of the Agriculture of Wilts," which is a book of great authority, and which professes to give an account of all

the customs of entry and outgoing; see pp. 29 to 34. I have looked through this work in vain for any rule which will give an exact interpretation to this obligation to pen and fold according to the custom of the country.

in the last year of this demise) sow a good and sufficient quantity of hop and rye or broad clover grass seeds, and shall not nor will plough or break up the same (except for the purpose of planting and sowing the same with turnips, rape, rye, or vetches, to be fed off and consumed green on the land whereon the same shall have grown, or than and except so much of the vetches as may be reasonably required for seed to be used in any one year on the said demised premises) until the summer in the second year after such hop or rye, or broad clover grass seeds shall have been sown (o).

17. Down  
arable land.  
Six-field  
course.

AND as to the piece of down arable land marked (B) in the said schedule, the said C. L., his executors, administrators, and assigns, shall and will cultivate the same in six equal parts, and in manner following; (that is to say,) not more than one sixth part thereof to be sown in any one year with rye (one half of which shall be 'kept for seed, and the other half thereof shall be consumed green upon the land), not less than one other sixth part thereof to be sown with turnips (to succeed the rye and precede a crop of oats or barley), and which said turnips shall be fed off and consumed green on the land whereon the same shall have grown, and not more than one other sixth part thereof to be sown with oats or barley (to succeed the turnips), and with such oats or barley to be sown a good and sufficient quantity of grass seeds, and such land to lie and not be broken up for three successive years after the sowing of such grass seeds; and also shall and will continually keep in saintfoin thirty acres

(o) Mr. Davis says, "The down lands of this district will not bear fallowing; they are too thin and light already.

"But when the objection against fallowing is made solely as the loss of a crop, it may be asked whether vegetable as well as animal strength when exhausted does not require both food and rest to restore it?

And where less of the former can be procured, recourse must be had to more of the latter. Every good Wiltshire farmer will say that upon the Downs two years' rest for wheat is equal to the best coat of dung. Dung may give the *quantity*, but rest must give the *quality*."—Mr. Davis's book was published in 1813.



at least of the said arable lands, in such a manner as that at least thirty acres of the said arable lands shall, on the determination of this demise, be in saintfoin of not more than six years' growth: provided, that in case there shall be more than thirty acres so in saintfoin as last aforesaid, the surplus quantity over and above such thirty acres as aforesaid shall be paid for by the said reversioners or reversioner, or their, his or her succeeding tenant or tenants according to a valuation to be made by two persons, one of them to be chosen by the said C. L., his executors, administrators, or assigns, and the other of them to be chosen by the said reversioners or reversioner; and, in case such two persons so nominated shall disagree as to the amount, then according to a valuation to be made by an umpire to be chosen by the two persons first named, and the valuation so to be made shall be binding and conclusive on all the said parties.

18. To consume hay, straw, &c., on premises.

AND ALSO shall and will, yearly and every year during this demise, embarn, rick, or stack, in the bartons or farm-yards belonging to the said premises all the corn, grain, and produce which shall grow or arise thereon, and thresh out on the said premises all the corn and other grain grown thereon, and consume on the said premises all the straw, dust, chaff, and fodder arising therefrom (except the straw which shall be used for thatching, and also except as hereinafter is mentioned), and also all the hay that shall grow or arise upon or from the said premises (except as hereinafter is mentioned); and also shall and will spend, spread, and lay in a husbandlike manner, where the same shall be most wanted, all the dung, manure, and compost that shall arise and be made on the said premises (except the dung, manure, and compost to arise during the last year of this demise), and so that there be spent, spread, and laid in every year on such of the dry meadow land as shall have been cut for hay during the last preceding summer a quantity of dung, manure, or compost not less than the quantity of dung which shall have been made from the hay grown thereon.

19. To leave  
unconsumed  
manure, &c.

AND ALSO shall and will leave in the yards; or some other convenient parts of the said premises, the dung, manure, or compost so excepted as aforesaid, and also the dung, manure, and compost to be made during the time which shall elapse after the determination of this demise and before the 14th day of May then next following, for the benefit of the reversioners or reversioner, or their, his or her succeeding tenant or tenants; and if there shall remain at the expiration of this demise any hay unconsumed upon the said premises, shall and will offer the same to the reversioners or reversioner of the said premises, or their, his or her succeeding tenant or tenants, at a valuation to be made by two persons, or their umpire, to be chosen as hereinbefore is mentioned (and the valuation to be made at a fair market price of such last year's hay only); and shall and will leave unconsumed, for the use of the reversioners or reversioner of the said premises, or their, his or her succeeding tenant or tenants, such a quantity of good wheat straw as shall be sufficient to thatch the hay-ricks to be made from the produce of the farm in the year next after the determination of this demise.

Pigeons.

AND ALSO shall and will keep up and preserve the stock of pigeons, so as that, at the expiration of this demise, there shall not be a less stock than 300 pigeons in the dovecote on the said premises, such pigeons to be left without charge to the reversioner.

Trees.

AND SHALL not, nor will at any time or times hereafter during the continuance of this demise, fell, cut down, hew, grub up, lop, top, cut, or strip, or cause or willingly or negligently permit or suffer to be felled, cut down, hewed, grubbed up, lopped, topped, cut, or stripped, any timber or timber-like trees, saplings, stanmers, or stool-sticks of oak, ash, or elm, or the branches, lops, or tops of the same, or any fruit trees, or any seedlings, stovers, or young spiers thereof, or any bodies of pollards or willows now growing or being, or which shall at any time or times hereafter during the continuance of this demise grow or be on the said premises or any part or parts thereof, and

shall not nor will at any time or times during the continuance of this demise lop, top, shroud, or cut away any pollard trees which have not been usually heretofore lopped, topped, shrouded, or cut, nor lop, top, shroud, or cut away any pollard trees higher or further than the last toppings, shroudings, and cuttings thereof, or at any other than the usual times for lopping, topping, shrouding, and cutting such pollard trees.

20. To allow pre-entry in the last year, &c.

AND ALSO that the said C. L., his executors, administrators, and assigns, shall and will permit and suffer the reversioners or reversioner for the time being, and their, his, or her succeeding tenant and tenants, and their or any of their servants and workmen, with wagons, carts, horses, and all necessary implements, to enter upon, occupy, and cultivate the lands hereinbefore respectively stipulated to be entered upon during the last year of the said term from and after the several days and times hereinbefore expressed in that behalf; and also shall and will, at his and their own expense, harrow in and roll the clover or other grass seeds to be sown by the reversioners or reversioner, or by their, his, or her succeeding tenant or tenants, in the last year of this demise, in pursuance of the stipulations or reservation in that behalf hereinbefore contained; and also shall and will find and provide convenient lodging room for the servants and workmen to be employed in pursuance of the said reservations or any of them, and one moiety of the stabling for the horses, and for hay, corn, and provender for the same, and also one moiety of the wagon houses and cart sheds for the wagons, carts, and implements during the time of their respectively being employed in cultivating the said lands; and also shall and will furnish and provide sufficient wheat straw for the litter for the horses so employed as last aforesaid.

COVENANTS  
BY LAND-  
LORD.

AND the said G. G. doth, for himself, his heirs, executors, and administrators, covenant with the said

G G

21. Allow-  
ance for  
making  
pond.

C. L., his executors, administrators, and assigns, in manner following, (that is to say,) that he the said G. G., his heirs or assigns, or other the person or persons for the time being entitled to the reversion of the said demised premises, shall and will, out of the said rent made payable by these presents, allow to the said C. L. the sum of 10*l.* towards the expense which shall be incurred by him in making a pond between his lands described in the map of the said estates as T. and S.

22. To put  
in repair.

AND ALSO shall and will, before the 29th day of September, 18 , cause and procure the said farm house, barns, and all other the buildings, stables, hatch works, and granary hereinbefore demised to be placed in good tenantable repair according to the judgment of [A. B. and C. D.] of aforesaid, surveyors.

23. To allow  
timber, &c.

AND that he the said G. G., his heirs and assigns, or other the person or persons for the time being entitled to the reversion of the said demised premises, shall and will at all seasonable times on request, assign and allow unto the said C. L. his executors, administrators, and assigns, during the continuance of this demise, proper and necessary rough timber, and rough wood, stones, slates, bricks, tiles, lime, iron, and sand, for making the repairs hereinbefore respectively covenanted to be made by the said C. L., his executors, administrators, and assigns as aforesaid, and all thorns, stakes, quicks, and bushes, for making, mending, and repairing the hedges, ditches, drains, and fences.

24. To allow  
retention of  
barns, &c.

AND SHALL and will permit and suffer the said C. L. his executors, administrators, and assigns, after the determination of this demise, and until the 14th day of May then next following freely to use, occupy, and enjoy the barns and stack yards belonging to the said premises hereinbefore demised, for the purpose of laying up and threshing and dressing his and their corn and grain, and a sufficient part of the yards attached to the said barns and premises for the pur-

pose of spending and consuming with cattle the straw, chaff, and fodder, to arise from such corn and grain.

25. Water  
for mea-  
dows.

AND ALSO that in case at any time or times during the continuance of this demise the stream or water-course heretofore made use of and employed by the tenant or tenants for the time being of the said premises, in irrigating or watering the meadows marked K. L. M. in the said schedule to these presents shall be withheld or diverted in such a manner as that the said C. L., his executors, administrators, and assigns, shall not be entitled to use the same stream or water-course for the purpose of such irrigation as aforesaid, in as ample a manner as the same hath been heretofore used for that purpose, then and in each year in which any obstruction shall occur an abatement of the sum of 12*l.* 10*s.* shall be made out of the annual rent, such sum of 12*l.* 10*s.* to be returned to him the said C. L., his executors, administrators, or assigns, out of the quarter's rent payable on the 29th day of September in each such year.

For quiet  
enjoyment.

AND ALSO that he the said C. L., his executors, administrators, and assigns, paying the said yearly rents hereinbefore respectively reserved, as and when the same respectively shall become due and payable, and well and truly observing, performing, fulfilling, and keeping all and singular the covenants, conditions, and agreements, hereinbefore contained on his and their parts to be observed, performed, fulfilled, and kept according to the true intent of these presents, shall or lawfully may peaceably and quietly have, hold, use, occupy, possess and enjoy the said farm house, lands, messuages, and premises comprised in the said schedule to these presents, with the appurtenants during the continuance of the said term hereby granted, without any lawful let, suit, trouble, or hinderance, of or by the said G. G. his heirs or assigns, or any person or persons whomsoever, lawfully claiming or to claim by, from, under, or in trust for them or any of them.

26. Proviso  
for deter-  
mination of  
term.

PROVIDED ALWAYS, and it is hereby agreed and declared, by and between the several parties to these presents, that if the said C. L., his executors or administrators, shall be desirous of putting an end to this present demise at the expiration of the fourth year of the said term of eight years hereby granted, and shall for that purpose deliver to the said G. G. his heirs or assigns, or leave at his or their most usual places of abode one year's previous notice in writing of such his or their desire, and shall pay or cause to be paid all arrears of rent, and perform all and every the covenants hereinbefore contained, and on his and their part and behalf to be performed, then and in such case immediately after the expiration of the said term of four years this present indenture, and the term hereby granted, and every clause, matter, and thing herein contained, shall upon the expiration of the said notice, cease, determine, and become void, anything hereinbefore contained to the contrary notwithstanding, but nevertheless without prejudice to any remedy which any or either of the parties hereto or their respective representatives may have for the breach or non-performance of any of the covenants or agreements hereinbefore contained.

27. Proviso  
for cove-  
nants in  
case of de-  
termination  
of lease at  
the end of  
fourth year.

PROVIDED ALSO, and it is hereby declared and agreed by and between the said parties to these presents, that in case the said term hereby granted shall be determined at the end of the fourth year thereof under and by virtue of the proviso hereinbefore contained, then and in such case all and every the covenants, conditions, stipulations, and agreements, hereinbefore contained, and on the part of the said C. L. to be observed, kept, and performed, which apply to the last year of the said term hereby granted, shall relate and apply and be considered relative and applicable to the said fourth year of the said term. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

The Schedule to which the above-written Indenture refers.

Names of Lands.	State.	Quantity.		
		A.	R. P.	
House, Homestead, and Orchard .	Homestead	0	3 14	
The Marsh . . . . .	Rough Past.	5	1 26	
The Old Marsh . . . . .	Pasture	3	3 30	
Great Ground . . . . .	"	6	0 5	
Butcher's Ground . . . . .	"	2	2 10	
Pigeon House Close . . . . .	"	1	0 16	
Gumbleton Hill . . . . .	"	12	3 20	
Carthouse Mead . . . . .	Meadow	0	2 16	
Round Mead . . . . .	"	0	2 24	K.
Mill Mead . . . . .	"	7	1 24	K.
New Mead . . . . .	"	4	0 19	L.
Berry Mead . . . . .	"	4	3 31	M.
Pond Close . . . . .	Pasture	0	2 27	A.
The Croft . . . . .	Arable	1	2 31	A.
Three Corner Croft . . . . .	"	6	3 21	A.
Gumbleton Hill Field . . . . .	"	78	3 3	A.
Horsebarrow Field . . . . .	"	68	1 13	A.
Broad Field . . . . .	"	55	2 12	A.
Belonging to Broad Field . . . . .	"	18	1 7	A.
Lower Furlong . . . . .	"	35	0 0	A.
Two Upper Furlongs . . . . .	"	48	1 12	B.
Lower Furlong . . . . .	"	28	0 0	A.
Upper Furlong . . . . .	"	36	3 3	B.
New Land . . . . .	"	26	2 26	B.
Down Arable . . . . .	"	60	0 0	B.
Down Pasture . . . . .	Pasture	228	0 0	
Withey Bed . . . . .	"	0	1 4	
A Piece in Mr. Mumparson's Farm	Arable	1	1 0	A.
		731	3 34	

#### FORM OF LEASE, No. 4.

[The following form is taken from a Berkshire lease. It is a very good specimen of the ordinary agricultural lease, and may be advantageously adopted as a precedent. It will be observed, that as the term began to run before the date of the instrument, it must be presumed that the lessee has already enjoyed the privilege of pre-entry, when he covenants to allow to his successor, and has already paid all outgoing allowances to his predecessor. The culture covenants are fair for light turnip and barley land. Perhaps it might be well to insert provisoes that the rotation may be changed with the written con-

*sent of the landlord, and that no custom of the country shall affect the rights of the parties. The lease comprehends no tenant right.]*

1. Parties. THIS INDENTURE, made the thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Sir John C. of in the county of Oxford, baronet, of the one part, and W. S. of B. farm in the county of Berks, yeoman, of the other part, witnesseth that in consideration of the said W. S. having expended a considerable sum in making a dyke and embankment on the farm hereinafter demised, and in raising the bottom of the yard and adjoining ground, for the purpose of preventing or of lessening the injury from floods; and in consideration also of the rents and covenants hereinafter contained and expressed to be payable and performable on the part or parts of the said W. S., his executors or administrators, the said Sir J. C.
2. Demise. doth by these presents appoint and demise unto the said W. S., all that messuage or tenement and farm, called P. Farm, containing eighty-nine acres, or thereabouts; situate in the parish of Abingdon, in the said county of Berks, now in the occupation of the
3. Reservations. said W. S.; always reserving unto the said Sir J. C., his heirs and assigns, all mines, minerals, and quarries, and all royalties whatsoever; and all trees, saplings, ornamental and weather thorns and bushes; and liberty for the said Sir J. C. his heirs and assigns, friends, agents and servants, at all seasonable times to enter upon the said farm, or on any part thereof, to work any mines or quarries, or to fell, convert, and carry away any trees, or to view the state of the premises demised, or for any other lawful purposes: and also always reserving all game on, and the exclusive right of sporting over the said farm.
4. Habendum. To have and to hold the said messuage or tenement and farm hereby demised (subject to the reservations aforesaid), unto the said W. S., his executors and administrators, for the term of twenty-one years, to

Mines, minerals, and trees.

Entry to view.

Game.



5. Redden-  
dum.

Additional  
rents.

6. Covenant  
to pay rent.

Tithe rent  
charge.

Taxes.

7. To repair  
buildings.

be computed from the twenty-ninth day of September last, yielding and paying therefor unto the said Sir J. C., his heirs or assigns, the clear yearly rent of 105*l.*, by equal half-yearly payments, on the twenty-fifth day of March, and the twenty-ninth day of September in each year; and also yielding and paying the further clear yearly sum of 50*l.* for every acre, and after the same rate for any less quantity than an acre of the meadow or pasture land of the farm hereby demised, which shall be ploughed, dug up, or converted into tillage; the first payment of such last half-yearly rent to be made on the one of the half-yearly days which shall next happen after such ploughing, digging up, or conversion. AND the said W. S. doth hereby for himself, his heirs, executors and administrators, covenant with the said Sir J. C., his heirs and assigns, that the said W. S., his executors or administrators, will well and truly pay or cause to be paid to the said Sir J. C., his heirs or assigns, during this demise, the rent or rents hereinbefore made payable, as and when the same shall grow due, according to the true intent and meaning of these presents; and will also pay, discharge, and perform all tithes or rent-charges in lieu of tithes, rates, taxes, assessments, and parochial offices whatsoever, imposed on the demised premises, or on any part thereof, excepting the land tax, and landlord's property tax. AND will, at his or their own expense, the necessary unsawed timber, bricks, tiles, and lime, being found and allowed, within or not exceeding the distance of ten miles from the demised premises, by the said Sir J. C., his heirs or assigns, from time to time keep during this demise, and at the determination thereof leave to the satisfaction of his or their surveyor or agent, the messuage, barns, stables, and other buildings, wells, bars, posts, gates, rails, pales, stiles, and dead fences on or belonging to the said farm, in good and substantial repair in every respect (accident by fire or tempest only excepted), and will in the most effectual and husbandlike manner, protec

- Hedges.** and preserve from injury by cattle or otherwise, the live hedges, underwoods, saplings, and trees of every description on the said farm; and will cut the hedges at the proper and most approved ages or growths, and from time to time replant all vacant places in the same hedges; and will open and scour out in the most effectual manner the ditches where the hedges may be newly made, and throw all the mould or soil taken out of the ditches against the hedges for the purpose of encouraging their growth; AND will spend and consume on the said farm all the hay, straw, turnips, fodder, and haulm, which shall grow thereon, except any part of the hay which may be made in the last year of the term, which may be left for any succeeding tenant, or will pay for every load of hay or straw carried from the said farm, or take back and spread thereon two good loads of rotten dung; AND will drain and cultivate the lands of the same farm according to the most improved system of husbandry; AND will manage the arable lands after the four-field shift or course of cropping; AND will not sow more than one-fourth part of the arable lands of the same farm with wheat in any year, or more than one other fourth with corn of any description; AND that the said W. S. will permit the succeeding tenant of the said farm to enter on the 10th day of November in the last year of this demise on all or any part of the lands then in wheat stubble, or which shall come in course for fallow or a turnip crop, to plough and prepare the same lands for turnips, and also to enter in due season in the last spring of the said term on any part of the said farm which shall be sown with corn to sow clover or grass seeds, and will harrow in the said seeds, and will permit the succeeding tenant also to enter on the 1st day of September in the said last year on all or any part of the lands which shall be in seeds or clover, to plough and prepare the same lands for the wheat crop; AND that the said W. S., his executors or administrators, shall not feed or depasture any part of the young seeds after the 30th day of November in the
8. To consume fodder on farm,
- or bring back equivalent manure.
9. To drain and cultivate.
10. Four field-course.
11. To allow succeeding tenant pre-entry to plough for turnips,
- and to sow clover,
- to plough for wheat.
12. Not to depasture seeds, &c.

13. Manure. last year of this demise; AND shall not remove any soil, manure, or compost from the said farm; AND
14. Lopping trees. shall not cut any branch from any maiden tree on the said farm, nor cut any coppice, underwood, or hedge-row under eight years' growth, nor permit any to remain uncut beyond twelve years' growth, nor lop nor top any pollard under eight years' growth, or at any unseasonable time of the year; AND shall not assign, underlet, transfer, or part with the possession of the said farm hereby demised, or of any part thereof, or of this indenture, without the license in writing of the person or persons for the time being entitled to the receipt of the rent or rents hereinbefore made payable: PROVIDED ALWAYS nevertheless, and this demise is made upon this express condition, that if the rent or rents hereby reserved and becoming payable, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days after any of the days on which they are hereby made payable, the same having been first demanded, or if the said W. S., his executors or administrators, shall become bankrupt or insolvent, or if his personal estate on the said farm, or any part thereof, or these presents, or his term of interest in the said farm, shall be taken under any execution, or if default shall be made in the performance of any of the covenants on his or their part or parts hereinbefore contained, then and in any of such cases, although any rent may have been received with full notice thereof subsequently thereto, it shall and may be lawful for the person or persons for the time being entitled to the rents hereby made payable unto and upon the premises demised, or any part thereof, in the name of the whole wholly to re-enter, and the same to have again, re-possess, and re-enjoy, as in his or their former estate, anything hereinbefore contained to the contrary notwithstanding; AND the said Sir J. C. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said W. S., his executors and administrators, that the said Sir J. C., his heirs, executors, administrators, or
15. Not to assign.
16. Proviso for re-entry.
17. Landlord to allow timber, bricks, &c.

assigns, will assign or allow on the said farm, or within the distance of ten miles therefrom, the necessary unsawn timber, bricks, tiles, and lime, for repairing the messuage, barns, stables, and other buildings, gates, and stiles on the said farm, and that he or they will pay a fair and reasonable foddering price for the hay, straw, and chaff which may be provided or left for them in the last year of this demise, and for the seeds sown in the last spring of the said term, if the same shall be sown by the said W. S., his executors or administrators, and for folding the sheep on the clover lays in the same last year for the benefit of the succeeding tenant, according to the valuation of two indifferent persons, one of whom shall be chosen by the person or persons then entitled to the rent or rents of the premises demised, and the other by the said W. S., his executors or administrators, or, in the event of such two persons so to be chosen disagreeing in opinion, then by an umpire to be chosen by them, whose decision shall be final; And that the said W. S., his executors or administrators, paying the rent or rents hereinbefore reserved and becoming payable on the days hereinbefore appointed for payment thereof, and observing and performing the covenants hereinbefore contained and observable and performable on his and their part, shall and may peaceably hold and enjoy the demised premises during the said term without any hinderance or interruption of, from, or by the said Sir J. C., his heirs or assigns, or any person or persons claiming under him, them, or any of them; and also that the said W. S., his executors or administrators, shall be at liberty to hold over the barns on the said farm till the 24th day of June next succeeding the expiration of the said term, and a part of the yards and stables, to enable them to thresh out and carry to market his or their last year's crop. In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

18. To pay  
for hay, &c.,  
left,

and seeds,

for folding  
sheep.

19. Arbitra-  
tion.

20. Quiet  
enjoyment.

21. Lessee  
to hold over  
barns, &c.

## FORM OF LEASE, No. 5 (p).

*With Corn Rent.—Covenants for Drainage—for Quiet Enjoyment Absolute—for Erection of Buildings by Landlord.—Commencement at Lady-day with Pre-entry upon Fallows and Meadow.*

THIS INDENTURE, made the thirty-first day of August, in the year of our Lord one thousand eight hundred and                   , between A. B. of                   in the county of Stafford, gentleman, and C. D. of Manchester, in the county of Lancaster, gentleman, of the one part, and E. F., late of N. in the county of Salop, but now of                   aforesaid, farmer of the other part, witnesseth, that for and in consideration of the rents, covenants, conditions and agreements hereinafter reserved and contained on the part and behalf of the said E. F., his executors and administrators, to be paid,

## 1. Demise.

kept, done, and performed: they the said A. B. and C. D. have, and each of them hath, demised, leased, set, and to farm let, and by these presents do, and each of them doth demise, lease, set, and to farm let, and in exercise and in execution of all powers and authorities whatsoever, to them or either of them given and reserved, or in anywise enabling them or either of them in this behalf, do, and each of them doth direct, limit, and appoint unto the said E. F., his executors and administrators,

## 2. Parcels.

All that messuage, farm house, or tenement, with the several closes, pieces, or parcels of land thereto adjoining, and belonging and occupied therewith, situate and being at                   and in the parishes of E. and C., or one or both of them, in the said county of Stafford, called the Grange Farm, with the barns, stables, and other buildings, yards, gardens, home-

(p) This form is in use in Staffordshire. The agricultural covenants were settled by Mr. Lewis of Trentham. It is to be observed, that this lease contains no covenant

on the part of the lessee to pay the outgoing allowances to the preceding tenant, and no covenant on the part of the landlord to pay outgoing allowances to lessee.

steads, and other appurtenances thereto belonging, and particularly mentioned and described in the schedule to these presents, together with full liberty, power, and authority to and for the said E. F., his executors, administrators, and assigns, to use the water in the river adjoining to or running through the said demised premises, three days and a half in each week during the term hereby demised, for the purpose of irrigating and otherwise manuring and improving the said demised premises; and together with all cottages, buildings, ways, rights, easements, profits, privileges, advantages, and appurtenances whatsoever, to the said messuage, lands, and hereditaments belonging or otherwise appertaining. Except and always reserved out of this present demise unto the said A. B. and C. D., all woods, underwoods, timber, and other trees, with the tops and branches thereof, [and the soil within five feet of the centre of any tree,] and all mines and minerals, coals and delphs of what kind and nature soever, upon, in, or under the said premises, with full and free liberty, power, and authority to and for the said A. B. and C. D., and his and their servants, agents, and workmen, with all necessary or convenient erections, engines, carts, and carriages, using or making all convenient ways; to fall, work up, bore, search for, and get the same, on paying all reasonable charges for any damage which shall be done to the said demised premises.

3. Haben-  
dum.

TO HAVE AND TO HOLD the said messuage, closes, pieces, or parcels of land, hereditaments, and all and singular other the premises hereinbefore particularly mentioned and described, and intended to be hereby demised, with their and every of their appurtenances (except as is before excepted), unto the said E. F., his executors and administrators, from the twenty-fifth day of March last, for and during and unto the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended.

4. Redden-  
dum.

YIELDING AND PAYING therefor yearly and every

5. Additional rents.

6. Provision for corn rent.

year during the said term hereby demised unto the said A. B. and his assigns during his natural life, and after his decease unto the said C. D., his heirs and assigns, the yearly rent or sum of 500*l.* of lawful money of Great Britain, by four equal quarterly payments on the days following (that is to say), on the twenty-first day of June, the twenty-ninth day of September, the twenty-fifth day of December, and the twenty-fifth day of March in every year, without any deduction or abatement whatsoever, for or on account of any cause, matter, or thing whatsoever, and the first of the said half-yearly payments to be made on the twenty-first day of June, now next ensuing. And also yielding and paying over and above the aforesaid rent, the further rent or sum of 20*l.* of like lawful money aforesaid, unto the said A. B. and his assigns during his life, and after his decease unto the said C. D., his heirs and assigns, upon the twenty-fifth day of March in each and every year, during the continuance of the said term hereby demised, for each and every acre of the meadow and pasture lands hereby demised and specified in the schedule hereto (except the two closes therein set forth and named as the Manning's Birch, and the Pool Sorrel), which the said E. F., his executors or administrators and assigns, shall at any time or times during the said term, have ploughed, dug, broken up or converted into tillage, or set or sown, with any corn, grain, seed, or root whatsoever, in respect of which he may have, or permitted and suffered the same to be done, and so in proportion for any greater or less quantity than an acre: Provided always, and it is hereby declared and agreed, by and between the said parties hereto, that it shall and may be lawful to and for the said A. B. or his assigns during his life, or the said C. D., his heirs or assigns, after the determination of the estate of the said A. B., or for the said E. F., his executors, administrators and assigns, to give six calendar months' notice in writing, of his or their intention to avail himself or themselves

of this proviso; such notice to be given to the said E. F., if the exercise of this option shall be on the part of the landlord; but if the exercise of this option shall be on the part of the tenant, then to the said A. B. during his life, or after his decease to the said C. D., his heirs or assigns, such notice to be left at his or their last and most usual place of abode, and the said notice shall express the intention of the party signing the same to change the said rent or annual sum of 500*l.* into a variable corn rent, and from and after the expiration of such six calendar months' notice, the said E. F., his executors, administrators, or assigns, shall yield and pay unto the said A. B. during his life, and after his decease unto the said C. D., his heirs and assigns, yearly and every year during the said term, the yearly rent or sum of 250*l.* of lawful British money, and such further yearly rent in like lawful money, as fifty (*q*) quarters of wheat, fifty quarters of barley, and fifty quarters of oats, imperial measure, at or according to the average price per quarter of wheat, barley, and oats respectively in England for the three years ending on the preceding first day of January, yearly, to be ascertained from the returns published in the *London Gazette*, shall amount to, and such corn rent shall continue payable during the remainder of the said term hereby demised: Provided always, that such notice shall expire, and such corn rent commence and be paid on one of the aforesaid quarterly days of payment.

7. Re-entry  
for non-  
payment of  
rent,

PROVIDED always, and it is hereby declared and agreed between and by the said parties to these presents, that if the several yearly reserved rents or sums of money, or any, or either of them or any part thereof respectively, shall be behind or unpaid for the space of twenty days next after any or either of

(*q*) Half the rent in money, and the other half in a variable corn rent spread over a three years' average, and calculated as a starting point

upon wheat being 50*s.*, barley 30*s.*, and oats 20*s.* per quarter, or the aggregate price of the three, 12*s.* 6*d.* per three bushels.



or assign-  
ment,

or breach of  
covenants.

the said days whereon the same ought to be paid as aforesaid, and no sufficient distress or distresses can or may be found upon the said premises visible and open to be taken to satisfy the same; or if the said E. F., his executors or administrators shall set, let, sell, demise, assign, or otherwise part with this indenture, or the premises hereby leased, or any part thereof either absolutely or conditionally for all or any part of the said term hereby demised, to any person or persons whomsoever, (except to or in trust for his wife, child or children, executors or administrators), without the license or consent of the said A. B. during his life, and after his decease of the said C. D., his heirs or assigns, first had and obtained in writing under his or their hand and seal for that purpose, or if the said E. F., his executors, administrators, or assigns shall not at all times well and truly observe, perform, fulfil, accomplish, pay, and keep all and singular the covenants, clauses, payments, and agreements herein contained, and on his and their part and behalf, to be observed, performed, fulfilled, accomplished, paid and kept, that then and in either of the said cases it shall and may be lawful to and for the said A. B. during his life, and after his decease to and for the said C. D., his heirs, and assigns, to all and singular the said demised premises with the appurtenances or any part thereof in the name of the whole to re-enter, and the same to have again, repossess and enjoy as in his and their former estate, anything herein contained to the contrary notwithstanding.

COVENANTS.

6. To pay  
rents.

AND the said E. F. doth hereby for himself and his heirs, executors, and administrators, covenant, promise, and agree to and with the said A. B. and C. D., and their heirs, in manner following, (that is to say,) that he the said E. F. his executors and administrators, or some or one of them, shall and will well and truly pay or cause to be paid unto the said A. B. and his assigns, during his life, and after his decease unto the said C. D., his heirs and assigns,

the several yearly reserved rents or sums of money at such days and times and in such manner as are hereinbefore appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents; and also that he the said E. F., his executors and administrators, some or one of them, shall and will bear, pay, and discharge, all, and all manner of levies, rates, taxes, charges, and assessments whatsoever (except the tithe rent-charge apportioned upon the said farm, which is to be borne and paid by the said A. B. during his life, and after his decease by the said C. D., his heirs and assigns), which now are or shall at any time during the continuance of this demise, be taxed, charged, levied, rated or assessed upon the said premises or any part thereof by authority of Parliament or otherwise how-

9. To repair. soever; AND also that he the said E. F., his executors and administrators, shall and will from time to time and at all times during the continuance of this demise, well and sufficiently repair, uphold, maintain, and keep all the buildings, barns, stables, gates, stiles, hedges, ditches, mounds and fences, which now are or at any time during the continuance of the said term, shall be erected or built upon the said demised premises, and also the fences of the plantations lying within the said demised premises, in good and sufficient tenantable order, repair, and condition, and deliver them up in the like repair at the expiration of the said term hereby demised, (bricks and tiles at the kiln, and timber in the rough necessary for such repairs being found and provided by the said A. B. and his assigns during his life, and after his decease by the said C. D. his heirs and assigns;) AND also that the said E. F., his executors and administrators, shall and will from time to time and at all times during the said term, well and effectually and in a good and permanent manner, drain such of the lands and premises hereby demised, as shall from time to time require the same for improvement thereof,
10. Fences.
11. Drainage.

on being allowed sougning tiles at the kiln for that purpose.

**CULTURE CO-  
VENANTS.**

12. Good  
husbandry.

13. Two  
successive  
grain or  
pulse crops.

AND shall and will dress, manure, improve, farm, cultivate, and manage, all and singular the said lands and premises hereby demised according to their several natures and qualities agreeably to the rules of good husbandry. And that he the said E. F., his executors or administrators, shall not nor will take more than two successive crops of corn, grain, or pulse of or from the arable land hereby demised, without summer tilling and sowing turnips thereon, and feeding or consuming the same with sheep or cattle upon the lands producing such turnips, nor shall nor will set, sow, or take more than two crops of corn, grain, or pulse, without laying the land down in a husbandlike manner with some grass or clover seeds and continuing the same so laid down for one complete year at least.

14. Mowing.

AND shall not nor will mow or cut for hay any of the grass growing or arising upon the said lands and premises hereby demised oftener than once in each year.

**OUTGOING  
OBLIGATIONS.**

15. Pre-en-  
try to plough  
fallows, &c.

AND that he the said E. F., his executors, administrators, and assigns, shall and will, at the commencement of the last year of the said term, leave to be fallowed one moiety at the least of the lands which shall be then in the course or succession to be cultivated for green crops or fallows; and shall and will permit and suffer the succeeding or incoming tenant or tenants of the said premises, and his or their servants or agents, with carts, horses, ploughs, and other necessary implements, at any time after the 1st day of November in such last year of the said term, to enter into and upon the land so to be left and fallowed as aforesaid, and to break up, plough, fallow, dung, sow, manure, or otherwise to prepare and manage the same in the usual course of agriculture, and to hold the part or parts of the said premises so to be left for fallows as aforesaid from the time at which the same shall be set, left, and entered upon as aforesaid

during the then residue of the said term, without making any recompense or satisfaction to the said E. F., his executors, administrators, and assigns, in respect thereof.

and spread  
dung.

AND shall and will permit and suffer such succeeding or incoming tenant, and his and their servants and agents, to carry and spread the dung and manure remaining and being in the farm-yard or other part of the said premises, to or upon the lands so to be left for fallow as aforesaid.

16. Pre-en-  
try on mea-  
dow lands.

AND also that it shall and may be lawful to and for the succeeding or incoming tenant of the said demised premises, at any time after the 1st day of November in the last year of the said term, to enter into and upon the meadow lands hereby demised, for the purpose of opening and cleansing the gutters therein, and for all other necessary purposes.

17. Not to  
sell hay,  
straw, or  
fodder.

AND shall not nor will lend, sell, take, or carry away from the said demised premises, or any part thereof, any of the hay, straw, clover, turnips, muck, manure, dung, or compost which shall arise, grow, or be made upon the same, without the license or consent in writing of the said A. B., or his assigns, during his life, and after his decease of the said C. D., his heirs or assigns, first had and obtained for that purpose, but shall and will eat, use, consume, and spend the same upon some part of the said premises, and leave the last winter muck and the last year's unconsumed hay and straw thereon for the benefit of the farm, and the owners thereof being allowed the fair and reasonable value of such hay and straw, such value being considered at a consuming price, and to be ascertained by two competent and indifferent persons, one to be chosen by the lessors and the other by the tenant, and, in case of their disagreement, by an umpire to be appointed by such two referees.

18. Trees.

AND also shall not nor will, at any time or times during the continuance of this demise, top, lop, crop, or head any of the timber or other trees upon the said premises.

19. Not to underlet.

AND also shall not nor will, at any time during the said term, set, let, sell, assign, or otherwise dispose of all or any part of the said demised premises, either absolutely or conditionally, for all or any part of the said term, to any person or persons whomsoever, without the license or consent in writing of the said A. B. or his assigns during his lifetime, and after the determination of the estate of the said A. B., then of the said C. D. his heirs or assigns, first had and obtained for that purpose (except to or in trust for the wife, child, or children of the said W. F.).

20. Covenant for quiet enjoyment—absolute.

AND the said A. B. and C. D. do hereby, for themselves, jointly and severally, and for their several and respective heirs and assigns, covenant, promise and agree with and to the said E. F., his executors and administrators, that he the said E. F., his executors and administrators, paying the said rents hereby reserved, and performing the covenants and clauses hereinbefore mentioned on his and their parts to be paid, kept, done, and performed, shall peaceably and quietly enter into and enjoy the premises hereby demised during the said term of twenty-one years, without the interruption or disturbance of the said A. B. or C. D., their heirs or assigns, or any other person or persons whomsoever.

21. Landlord to pay tithe rent-charge.

AND also that he the said A. B., and his assigns, during his life, and after his decease the said C. D., his heirs and assigns, shall and will during the said term hereby demised well and truly pay all and all manner of tithe rent-charge in respect of the said demised premises; and that in case the said E. F., his executors, administrators, or assigns, shall at any time during the said term pay the said tithe rent-charge, or any part thereof, it shall and may be lawful for him and them to deduct such payments respectively from his and their annual rent hereby reserved.

22. Landlord to erect buildings.

AND the said A. B. doth hereby, for himself, his heirs and assigns, covenant and agree with the said E. F., his executors, administrators, and assigns, that he the said A. B., his heirs or assigns, shall and will,

within two years from the date of these presents, at his and their own cost and charge, erect and build in a substantial and workmanlike manner a small parlour, with a bedroom, over the dwelling-house hereby demised, and also four cottages for labourers upon such part of the said demised premises as shall be selected by the said E. F., his executors, administrators, or assigns.

AND further, that in case the said E. F., his executors, administrators, or assigns, shall, at any time during the said term, think proper to erect two other labourers' cottages upon the said demised premises, in such case they the said A. B. and C. D., his heirs and assigns, do hereby covenant with the said E. F., his executors, administrators, and assigns, that they shall and will, on having reasonable notice, find and provide bricks at the kiln and timber in the rough necessary for such cottages. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first hereinbefore written.

The Schedule hereinbefore referred to, containing a particular of the premises hereinbefore demised.

Permanent Grass Lands.			
No. on Tithe Apportionment Map.	Name of Field.	Quality.	Quantity.
141	Blackacre	Meadow	A.   B.   P. 5   0   24
142	The Leasowes	Pasture	12   3   18
Arable Lands.			
No. on Tithe Apportionment Map.	Name of Field.	Course of cropping in the Year 184 .	Quantity.
	High Croft Low Croft Middle Croft		A.   R.   P.

## FORM OF LEASE, No. 6.

**Term Nineteen Years.**—Entry at Whitsunday as to House and Grass Lands, and after Harvest as to Corn Lands.—Reservation of Right to plant, &c., and to sport, &c.; but on Condition of making Compensation for Injury done.—Incomer to spend on the Farm Moneys received from Outgoer for Dilapidations.—Landlord to pay for New Buildings, &c.—Power to remove Useless Fences.—Culture Covenants, distinguishing between the first Fourteen Years and the last Five Years of the Lease.—Manure to be paid for, and Outgoer's last Crop to be taken at a Valuation.

[Commencement as in former precedents.]

**1. Parcels.** All the lands and farm of F. as at the present possessed by G. H. lying in the parish of I. and county of K.

**2. Habendum.** To hold for the space of nineteen years from and after the said C. D.'s entry thereto, which is hereby declared to be on the 26th day of May, or the term of Whitsunday by the old style in the year 1845, as to the houses, yards, grass, and fallow, and at the separation of the corn crop from the ground in that year as to the land in corn.

**3. Reservations.** Reserving liberty to the said A. B., his heirs and assigns, to search for, work, and carry away, all metals or minerals, and marl, that may be found in or upon the said lands: also to exchange with the conterminous proprietors such parts thereof as may be necessary for straightening the boundaries and fences; also to plant trees in situations unfit for tillage to the extent of                    acres, the said A. B. and his fore-saids inclosing the same by a proper fence, and allowing a deduction from the rent for the ground so planted; also to alter the present farm-roads and make new ones, a sufficient fence being erected by them on either side of such roads; also to preserve game, and to hunt, shoot, and fish upon the said lands by themselves or others, having their authority, and also free access to cut and carry away the trees already upon the said farm, or such as may be planted thereon, and for inspecting the culture and condition of the premises, and the works that may be carrying

on in virtue of these reservations. But so nevertheless that the said A. B. and his foresaids, shall pay to the said C. D. and his foresaids whatever loss or damage they may at any time suffer in the exercise of the powers hereby reserved as the same shall be ascertained by arbiters to be hereinafter appointed.

4. To leave in repair, and to expend on farm, sums received from outgoing tenant for dilapidations.

And whereas the said G. H., the present tenant of the lands hereby let is bound to leave the houses and fences in sufficient tenantable and habitable repair, or to pay such a sum as may be necessary to put them into that state at his removal therefrom on the said 26th day of May, 1845, as the same shall be ascertained by arbitrators to be mutually appointed for that purpose, therefore the said A. B. and his foresaids, in the event of a sum being found to be due by the said G. H. on that account, hereby covenant, promise, and agree, to and with the said C. D. and his foresaids, to pay over the same to the said C. D., or his foresaids, or to the arbitrators chosen as hereinafter mentioned, upon the necessary repairs being so executed under their own direction: And further in respect the houses and fences now upon the premises are not, or may not be, sufficient during the subsistence of this lease, the said A. B., for himself and his foresaids, covenants with the said C. D., and his foresaids, to allow to the said C. D., and his foresaids, any sum that may be required for altering or renewing the houses and fences, not exceeding in all one year's rent upon evidence of the same or any part thereof having been expended by the said C. D., and his foresaids, within six years after the commencement of this lease, and that to allow the same to be deducted from the rent that shall accrue due at the term of Whitsunday or Martinmas next ensuing the said outlay: Provided always that the outlay to be thus incurred shall have been previously approved of by the said A. B. or his foresaids, or by the arbiters to be hereinafter appointed, or otherwise, the said C. D. and his foresaids shall pay interest at five per cent. per annum on the sum so expended from the

5. Landlord to pay for new buildings.



## 5. Rent.

term at which it has been allowed to them, and thereafter along with the rent during the remaining years of this lease [covenant to pay rent at Candlemas and Lammas, first payment at Candlemas, 1847.] (r)

## 6. Repair of fences, &amp;c.

And further that with regard to the houses and fences on the premises hereby let, or that may be erected thereon, the said C. D. binds and obliges himself and his foresaids to maintain them in good and sufficient repair during the currency of this lease, the fences around the plantations excepted, which are to be kept in repair by the said A. B. and his foresaids and so to leave them at the expiration thereof, or at his or their removal therefrom, but without prejudice to such of the old houses and fences being pulled down, their site being in that case properly cleared, as may be rendered unnecessary by the new erections, towards which the materials shall be applied as far as they are suitable.

## 7. CULTURE COVENANTS.

[*General Covenants against removing Hay made from natural Grasses, or Straw or Manure, or taking Two White-straw Crops in Succession.*]

One-sixth to be in fallow during first 14 years of lease;

during last five years of term.

And further, that during the first fourteen years of this lease, at least one sixth of the land in tillage, including what was sown to grass with the immediately preceding crop shall be in plain fallow or turnips every year, and be sown with grass seeds along with the first corn crop thereafter, all the land kept in tillage to be so cultivated in rotation. And further, that during the last five years of this lease, no hay of any kind shall be carried off the farm, and at least one fifth of the land in tillage, and every part of it in its turn, shall be under plain fallow or turnips every year, and be sown with grass seeds along with the following corn crop; and as the said A. B., and his foresaids, shall furnish or pay for the grass seeds to be sown

(r) Thus the tenant always has a full year's rent in hand, see *ante*, p. 180.

To preserve  
young  
grasses.

Incomer to  
enter upon  
fallows at  
Martinmas.

Dung, hay,  
and straw  
to be paid  
for.

Outgoing  
crop to be  
taken at a  
valuation.

with the last crop but one, as well as with the last or awaygoing crop; the said C. B. and his foresaids shall be bound to preserve the young grasses from the time of the separation of the crop, till his or their removal at the Whitsunday ensuing, without allowing any stock to pasture upon, or tread down the same.

And also to allow the landlord or incoming tenant to enter to the portion of the farm to be left for fallow, which shall not be less than one-fifth of the arable land, at any time after the term of Martinmas preceding his removal. And further, it is mutually covenanted between the parties hereto for and with themselves and their respective foresaids, that the whole of the dung not applied, whether made from the last crop but one, or from preceding crops, and also what straw may be on the farm at the removal of C. D. or his foresaids from the houses, shall be left for the landlord, and be paid for according to their fair value, as between strangers. And further, that the last crop, corn and straw, shall, in like manner be taken by the landlord at a valuation, as soon as it is ready to be reaped, and the price thereof, as well as of the dung and straw mentioned in the preceding article, shall be paid, under deduction of the last year's rent, and any claim for repairs or otherwise against the tenant, to the said C. D. or his foresaids, at Candlemas and Whitsunday ensuing, by equal portions.

[The lease from which these provisions are taken, contains provisions for arbitration and covenants to yield up possession and for quiet enjoyment, for insurance by tenant, and other common provisions not necessary to repeat.]

## FORM OF LEASE, No. 7.

Term Twenty-one Years.—1. Habendum.—Entry at Whitsunday, as to House and Grass; at Separation of Crops, as to Arable; and at Lammas, as to Barns.—2. Allowance for Drainage and New Buildings during first Four Years of Lease.—3. Reddendum.—A Grain Rent with a maximum Limit.—4. Straw of last Crop to be left as Steelbow: Half Value for Remainder of Straw of penultimate Year.—5. Additional Rent for Breach of Culture Stipulations, with Provision that this shall not be a Bar to requiring a specific Performance.

[Commencement as in former precedents.]

1. Habendum.

To hold for the space of twenty-one years, from and after Whitsunday, 1845, as to the houses, stables, lyers, and grass, and the separation of the cross thereafter as to the arable lands, and as to the barns at Lammas, 18 ; at which respective periods the said C. D.'s entry to the premises in virtue hereof is hereby declared to have commenced.

[Reservations as in preceding precedent.]

2. Allowance for drainage,

And to encourage the said C. D. in improving the said lands by drainage, the said A. B., for himself, his heirs, and assigns, covenants with the said C. D., his executors, administrators, and assigns, to allow him a deduction from the rent of each of the first four years, of £ , on his producing vouchers that he has expended to that extent in the purchase of drain tiles. As also to allow him a further deduction from the rent of each of the first two years, of £ , on his producing vouchers that he has expended to that extent on new buildings, or on beneficial alterations in the present offices.

and new buildings.

3. Reddendum.

Yielding and paying therefor, during the continuance of the term hereby granted, the quantity and value of quarters of wheat, the conversion to be taken at the second or medium *fiar* (*s*) prices for the county of C. for the time, and that yearly and each year during the continuance of this lease, payable

(s) For an explanation of this term, see *ante*, p. 173. As in England we have no such means of

ascertaining local prices, we must adopt the imperial averages, or those of some neighbouring market.

half-yearly, in equal proportions, at the terms of Candlemas and Lammas; the rent for the first year to be payable by equal portions at the terms of Candlemas and Lammas in the year 1847, and so forth yearly and termly during the continuance of this lease, with a one fifth part more of each term's payment from the time the same falls due until payment (t): Provided nevertheless that the grain rent hereby stipulated to be paid by the said C. D. and his foresaids for the said lands, shall never, in reckoning the commuted value thereof, be taken at a higher rate per quarter than s., that sum being intended as a maximum beyond which the quarter of wheat shall never be reckoned.

4. As to dung and straw.—To leave straw of the last crop.

Dung and straw of penultimate year.

[The culture covenants are nearly the same as in the preceding precedent.]

5. Additional rent in case of breach of culture stipulations.

And further, that the said C. D. and his foresaids shall consume the whole straw growing yearly on the said lands on the ground thereof, and to apply the dung to manure the same, and to leave the whole straw of the last crop as steelbow; and with regard to the dung on hand, and unapplied to the awaygoing crop, the said C. D. and his foresaids shall receive half the value thereof; and also for such part of the straw of the penult crop as may be on hand according to its value if converted into dung, from the proprietor, as the same shall be ascertained by arbitration as herein-after provided for. And it is further specially covenanted and agreed that in case the said C. D. or his foresaids shall alter the mode of management and culture hereby prescribed, or deviate therefrom in any respect, he or they shall pay to the proprietor a quarter of wheat of additional rent, convertible and payable as aforesaid for each and every acre cultivated, employed, or managed contrary to or in a different manner from the plan of management above prescribed, unless he shall have received the express consent of the proprietor thereto in writing, and that yearly and each year while such alteration or depar-

(t) This is a common penalty in all Scotch Cases.

ture from the prescribed mode of management is observed, and which additional rent shall nowise be considered as a penalty, but as a consideration for the advantage which the tenant may promise himself by adopting a different system of management, and as a fair compensation for the injury which the proprietor may sustain, but without prejudice nevertheless to him or her insisting for specific performance on the part of the tenant and his foresaids, of the mode of management and system of rotation hereby established as they shall see cause.

[Other common provisions follow.]

#### FORM OF LEASE, No. 8.

1. Habendum.—Term Nineteen Years.—Martinmas Entry, except as to Barn and Stabling, and Whitsunday as to these.—2. Reddendum, part in Money, and the rest in Oats; the last Year's Rent to be due at Time of Removal.—3. Covenant to reside or pay additional Rent.—4. Special Provisions as to Culture during last Four Years; and as to Away-going Obligations.

[Commencement as before.]

1. Habendum.

To hold for the space and term of nineteen years from and after his entry thereto which is hereby declared to have been the term of Martinmas, 1845, except as to the barn and stabling for horses, and some of the cot houses, as to which his entry is declared to have been at Whitsunday, 1846, and from thenceforth to be peaceably occupied and possessed by the said C. D. and his foresaids during the whole space above mentioned.

[Reservations as before.]

2. Reddendum.

Yielding and paying to the said A. B., his heirs or assignees, yearly the sum of £                      sterling, of money-rent, and                      quarters of oats, to be computed and paid in money, at the average price of oats, according to the imperial average, last published in the *London Gazette*, before the rent shall become due for the said lands and farm, payable in equal portions at Candlemas and Whitsunday yearly, beginning the first term's payment thereof at the term of

Candlemas, 1847, and the next term's payment at Whitsunday thereafter, and so forth yearly and termly, during the term hereby granted, with a fifth part more penalty in case of failure; the last year's rent to be due and payable at the time of removal, whether this lease shall have its natural or any other determination, the tenant being allowed a discount of the legal interest from that time, until the terms at which the rents would be payable respectively: also the said C. D. binds himself to pay statute labour money, school salary, poor's rates, and all other public burdens exigible by law: the said C. D. for himself, &c.,

5. To reside. covenants, &c., that he will reside constantly upon the said farm, during the continuance of the said term; or in failure of so doing that he will pay to the said A. B., or his foressaids yearly, £                      pounds sterling, for rent of the same in place of the rent before specified, and that by equal portions at the terms aforesaid, which shall be wholly considered as pactional and not penal rent. And further that the said C. D. shall manage the aforesaid lands conformably to the most approved principles of good husbandry; and in no way to deteriorate the said lands by over-cropping, or penury of dunging; and not to take two white crops in succession; and for the last four crops, the said C. D. covenants for himself and his foressaids, to cultivate the whole farm by a regular rotation of crops, and not to sow more wheat in any one year of the last four, than he has been in the regular practice of doing during its previous currency: also that he shall never sow wheat except after a clean summer fallow, potatoes or drilled beans, all being sufficiently manured: also that there shall be                      acres kept and left in pasture, properly sown up with a sufficient quantity of artificial grasses for the last                      years of the lease, and left at removal; the rest of the farm being kept in regular rotation of clover, grass, summer fallow, green and white crops; the said A. B. and his foressaids to have power to sow grass seeds with the last crop, upon any lands hereby let, that may be thought

Last year's rent due on removal.

Culture.

suitable; the said C. D. or his foresaids harrowing or rolling the same without compensation, he or they having no power to pasture the same after the grain crop is cut: further, that the said C. D. and his foresaids, shall leave a fallow break of        acres, lying contiguous or in whole fields, and of the medium quality of the farm, which shall be once ploughed by him or them before the month of March, preceding his or their removal, and given over to the said A. B. or his incoming tenant by the term of Whitsunday; the rent of the land and price of ploughing to be settled by arbitration: further, that the said C. D. and his foresaids shall apply the whole manure made upon the farm to the last or away-going crop, and that what may be made after sowing, shall on his removal be given up to the said A. B. at a valuation of valuers mutually chosen: and further that the said C. D. and his foresaids shall give stabling for horses to the landlord or his incoming tenant, for working the summer fallow, also cot-houses for servants, and that at the term of Whitsunday previous to his removal: and further that the said C. D., or his foresaids shall not sell any straw during the currency of the lease, and shall leave the straw of the last or away-going crop in steelbow, if not exceeding        stones, which quantity is to be delivered or accounted for by the said C. D. accordingly: and further that the said C. D. or his foresaids will, at the option of the landlord, give the remainder of the straw, if exceeding the quantity to be, or left in steelbow, or such part thereof as shall be required at a valuation: and it is further mutually covenanted by and between the said parties, that the said A. B. and his foresaids shall also have the option of taking the whole of the outgoing tenant's crop (deducting the value of the straw to be left in steelbow as aforesaid), at a valuation by arbitration, due notice of such intention being given in writing to the out-going tenant, by the day of       , previous to his removal.

[The other provisions are not special.]

## FORM OF LEASE, No. 9.

1. Habendum from Martinmas for Twenty-one Years.—2. Reddendum.—

3. Provisions as to Fences applicable to a Dairy Farm.

1. Habendum.

To hold for the space and term of twenty-one years from and after the term of Martinmas, 1845, which is hereby declared to have been the term of the said C.'s entry, reserving to the first-named parties and their heirs, successors, and assignees, the powers after written, all to be exercised at their pleasure, viz., &c. &c.

2. Reddendum.

Yielding and paying therefor, during the continuance of this lease, the yearly rent or sum of £ sterling, and that at two terms in the year, Candlemas and Lammas, by equal portions, beginning the first term's payment thereof at Lammas, 1846, and the second term's payment at Candlemas, 1847, and so forth yearly and termly thereafter during all the years of this lease, excepting the rent for the half-year preceding the expiry of this lease or removal of the tenant, which shall be payable at the term of expiry or removal, with one fifth part more of liquidate penalty for each term's failure, together with the legal interest of each term's payment during the not-payment thereof.

3. Fences applicable to a dairy farm.

And the said C., for himself, &c., covenants, &c., to keep and maintain the houses, fences, gates, and ditches, on the premises hereby let in good tenantable and fencible repair, and the live fences in thriving condition, during the currency of this lease, and so to leave them at the expiration thereof, or at his or their removal therefrom: but it is covenanted and agreed between the parties that fences and ditches inclosing plantations made, or which shall be made, shall be kept in repair by the landlord and tenant jointly, and that fences and ditches not coming in place of former farm fences and ditches, inclosing roads and railways which shall be made not for the use of the tenant shall be kept in repair by the landlord solely. And



further that if, at any time during the currency of this lease, the said houses, gates, ditches, which the tenant is bound to keep in repair, or any of them, shall be neglected or allowed to fall into disrepair, the said landlord shall be entitled to repair the same; and the said C. shall repay to him the sums expended in doing so, as the same shall be ascertained by the accounts and receipts of the workmen employed, and that along with the term's rent which shall be payable first after said expenditure is made.

[The lease from which these provisions are extracted has been printed at length by Mr. Hunter in his work upon Leases (Scotch), and it contains very long and special covenants as to culture, which may be there seen.]

#### FORM OF LEASE, No. 10.

The following Scotch tack or lease is a form used in the Lothians, and, with the preface of a short abstract, I print it unaltered. It is a very well-considered draft.

*Duration.*—Twenty-one years, from

*Commencement.*

Whitsunday, 1845, as to fallow and grass, and houses.

At separation of crops of 1845 as to arable.

Whitsunday, 1846, as to the barns and barn yards.

*Reservation.*

Loch and right of fishing, and reeds and coarse grass therein.

Coal, metals, minerals, stone, clay, and marl.

Power to resume thirty acres, to plant;

to make new or alter old roads and watercourses;

to straight the marches;

to exchange.

Making allowance to tenant according to arbitration.

Power to cut and carry wood, and grass in woods.

*Rent.*

960*l.*, at three times—Candlemas, Whitsunday, and Lammas;

*Rent*—continued.

first payment at Candlemas, 1847, with a fifth part more in case of failure, and legal interest.

And thirty-six double carts and horses for driving coals from Dunbar to Spott, seed time and harvest excepted.

*Covenants.*

To manage according to the rules of good husbandry.

Not to take two white crops in succession without a fallow or green crop intervening, except, &c.

But when seed crops fail, &c.

To have a sixth of infield arable in sown grass, and the same in fallow or turnips.

Not to break up outfield land during the last seven years, unless two years in grass.

To leave in a five-course rotation—two-fifth crop, one-fifth fallow, two-fifth grass, half grass two years old, and half one year.

All grass to be sown in with first crop after fallow or turnip.

To deliver all grass at Whitsunday, 1846; and fallow at Martinmas preceding last crop.

Tenant to receive value by arbitration for the fallow on infield land; not for outfield, but to receive ten acres of new grass on coming in.

Tenant may break up old grass once previous to last ten years, and take two white crops, then to lay down after turnips, and lime at forty bolls to the acre.

Old pasture may be broken up previous to last eight years twice, one white crop, and then to be lain down first crop after turnips and limed.

To consume all straw, chaff, and turnips.

Only ten acres to be in potatoes.

May sell hay, importing three cart loads of dung for every load of hay.

To use dung of last crop but one, or leave at 2s. 6d. per cubic yard.

Straw and chaff are steelbow; and last crop of straw and chaff to be left without remuneration.

Unused straw of year before, at 1d. per stone.

*Covenants—(continued).*

Proprietor or incoming tenant at end of term may sow grass in due season with last crop, and lessee shall harrow and roll in same.

*Repairs.*

Landlord to repair and build a barn, an engine house, and a stalk for a threshing mill, and to put the farm house in tenantable condition.

Thereafter tenant to repair and leave as he received them.

Landlord and tenant mutually to pay a hedger, and other provisions as to hedging.

*Draining.*

Landlord to allow 500*l.* for tiles.

Lessee to take present threshing machine at a valuation, and to deliver all mills, &c., in same manner.

Tenant not to drain loch or injure fishing.

Landlord to insure, and tenant to repay.

*Tenant a Bankrupt.*

Lease void, at the option of the lessor. Lessee may not carry on lease for behoof of creditors.

*Tenant to Deliver up.*

Proviso.—If two terms in arrear, lease *ipso facto* void at the option of the proprietor.

Proprietor may remove tenant summarily when term is elapsed.

Penalty of 500*l.*

It is contracted, agreed, and ended between the parties following, viz., J. S., Esq., of S., on the one part, and A. W., residing at C. near Haddington, on the other part, that is to say, the said J. S. has set, and in consideration of the tack duty and other prestations after mentioned, hereby sets and in tack and assedation sets to the said A. W. and his heirs, excluding assignees and subtenants, legal or conventional, all and hail the farm of S. consisting of seven hundred and five English acres or thereby, lying within the parish of S. and

shire of Haddington, and that for the space of twenty-one years from and after the said A. W.'s entry thereto, which is hereby declared to commence at the terms following, viz.: at the term of Whitsunday, 1845, as to the fallow and grass and the houses and yards, excepting the barns and barn yards, and, at the separation of the crop of the year 1845 from the ground, as to the arable land, and at the term of Whitsunday, 1846, as to the barns and barn yards; and from and after the respective periods foresaid to be peaceably occupied and possessed by the said A. W. and his foresaids during the whole foresaid space, RESERVING always from this set the loch called the            on the foresaid lands with the reeds and coarse grass growing therein, and the liberty of fishing therein and of cutting and carrying away the said reeds and coarse grass, and also reserving full power and liberty to the proprietor to dig for and to work and carry away the whole coal, metals, minerals, stone and sand, clay, and marl, in the lands hereby set, and to sink pits and to erect buildings, and to make roads for carrying on the works, and also full power and liberty to resume ground for planting to the extent of thirty Scotch acres. Also power to make new roads through the said farm for purposes either connected or unconnected with operations on the said farm, and to shut up or alter the present roads and make new ones, and to regulate and alter the watercourses through the said lands. Also to straight the marches, and to excamb with neighbouring proprietors such part of the lands hereby set as are necessary for that purpose, the tenant always receiving such damages for the foresaid operations or any of them as may be ascertained by two neutral men to be mutually chosen, or by an oversman to be named by the arbiters in case of their differing in opinion. And also reserving full power and liberty to the proprietor to cut and carry away the wood growing or to be planted on any part of the lands hereby set, and the grass growing among the plantations, when he may think proper, which tack, under the declarations and reservations foresaid, the said J. S. binds and obliges himself, his heirs, executors and successors, to warrant to the said A. W. and his foresaids, at all hands and against all mortals; for which causes, and on the other part, the said A. W. binds

and obliges himself, his heirs, executors, and successors whomsoever, to make payment to the said J. S. and his foresaids of the sum of 960*l.* sterling yearly, in name of tack-duty, at three terms in the year, Candlemas, Whitsunday, and Lammas, by equal portions, beginning the first term's payment at Candlemas, 1850, the second term's payment at Whitsunday following, and the third term's payment at Lammas thereafter, all in the said year 1850, and that in full for the first year's possession, and so forth yearly and termly thereafter during the currency of this tack, with a fifth part more of each term's payment of liquidate penalty in case of failure, and the legal interest of the said termly payments during the not-payment. And farther, the said A. W. binds and obliges himself to furnish in each year when required (seed time and harvest excepted) thirty-six double carts and horses for driving coals or any other articles from Dunbar to S. House or the like distance, each cart when carrying coals to carry a boll and a half, or eighteen hundred weight. And further the said A. W. binds and obliges himself and his foresaids during the whole currency of this tack, to manage the lands hereby let according to the rules of good husbandry, and never to take two white crops in succession without a fallow or green crop intervening, except with the permission of the proprietor first had and obtained in writing; but, in the event of the sown grass failing, it shall be in the power of the said A. W. to take another white crop sown down with a proper quantity of grass seeds on land where the grass may fail, after a week's notice is given to the proprietor or his managers; and, in particular, the said A. W. binds and obliges himself and his foresaids in each year to have a sixth part of the infield arable lands in sown grass, and the same proportion in fallow or turnip; and, with regard to the outfield land, it is hereby provided, and the said A. W. binds and obliges himself and his foresaids not to break up any part thereof during the last seven years of this lease, unless it shall have been two years in grass, and at the expiry of this lease the part of the said outfield land in tillage shall be left in a five-course rotation, thus: viz., two fifths in crop, one fifth in fallow, and two fifths in grass; and it is provided that one half of the said grass shall be two-year old and the other one-year old, and it is also agreed that all

the grass shall be sown in with the first crop after fallow or turnip ; and further, it is agreed that the whole grass on the farm, both infield and outfield land, shall be delivered to the landlord or incoming tenant at the expiry of this tack, viz., Whitsunday, 1869, without any allowance whatever. Further, the said A. W. binds and obliges himself and his foresaids to give up, at the term of Martinmas preceding, the last crop under this tack, for the purpose of being ploughed, the proportion of fallow which he is bound to leave both in the outfield and infield land being one sixth part of the arable infield land and one fifth of the arable outfield land under tillage, or as near that proportion as the size of the fields will permit, not taking a part only of a field when the full proportion can be got ; and it is provided that the landlord or incoming tenant shall be obliged to pay the said A. W. or his foresaids, for the fallow so left on the infield land, according to a valuation of two neutral men chosen by the parties, or an oversman to be named by the said arbiters, in the event of their differing in opinion, but the fallow left on the outfield land shall be given over without any payment or allowance as aforesaid ; and that in respect the tenant is to get it free of payment at his entry, and in respect the said A. W. is to receive at his entry ten acres of land of new grass, unpastured, for the purpose of cutting in the outfield land, he engages to leave at the expiry of this lease the like quantity unpastured from the separation of the preceding crops from the ground, and without any allowance. And with regard to that part of the lands called the braes or S. water parks, it is hereby provided, that it shall be in the power of the said A. W., or his foresaids, to break them up, once from lea at any time previous to the last ten years of this tack, and to take therefrom two white crops in succession, after which they shall be properly laid down in grass, with the first crop after turnips, and shall also be limed on the sward before being broken up, at the rate of not less than 40 bolls of lime-shells to the imperial acre ; and after having been so broken up once, it shall not be competent to the said A. W. or his foresaids again to do so ; and in regard to that part of the lands called the Backbraes, or old pasture lands on the south side of the Farm, it is hereby provided, that it shall be in the power of

the tenant at any time previous to the last eight years of the lease, to break them up from lea twice, but he shall only take one white crop therefrom at each breaking up, and the same shall thereafter be properly laid down in grass with the first crop after turnips; and shall before the first breaking up from lea be limed on the sward at the rate of forty bolls of lime shells per imperial acre, and after being laid down in pasture after the second breaking up, shall not be broken up thereafter. And the said A. W. binds and obliges himself and his foresaids to consume upon the said lands, the whole straw, chaff, and turnips, which shall grow upon the same; and to bestow the manure made therefrom upon the said lands, excepting the dung made from the crop immediately preceding the last one, and shall never have more than ten acres of the green crop land in potatoes. But notwithstanding this condition, it is provided, that the said A. W. or his foresaids may sell the hay growing on the foresaid lands, on condition of his laying thereon three full cart-loads of well rotted dung, not made from the produce of the farm, for each cart-load of hay sold; and it is further provided, that the tenant shall either bestow the dung of the last crop but one upon the lands, or leave it unused to the proprietor or incoming tenant on payment being made for the dung left and unused, at the rate of 2s. 6d. per cubic yard; but it is provided, that the dung shall not be measured till properly rotted, and if any dispute shall arise with respect to the quality of the dung that may be left on the farm, the same shall be referred to two neutral men to be mutually chosen, or to an oversman to be named by them, in the event of their differing in opinion. And further, it is admitted that the straw and chaff are steelbow; and the said A. W. hereby binds and obliges himself and his foresaids to leave the whole straw and chaff of the last crop which shall be reaped under this tack to the proprietor or incoming tenant, steelbow, without any payment or consideration therefor, excepting the unused straw of crop 1868, for which the tenant is to be allowed payment at the rate of 1d. per stone, he having paid this price for the straw of crop 1847, at his entry; but it is notwithstanding agreed that the said A. W. or his foresaids, may retain straw of the last crop, sufficient for the use of six horses, to be

used for the purpose of threshing out or leading away the last crop, on condition of giving the dung which may be made therefrom to the proprietor or incoming tenant, without payment. And it is farther agreed that the tenant shall be allowed stabling for the said horses, and also four cot houses for servants until Whitsunday, 1870, as the same shall be pointed out by the proprietor. And it is hereby agreed upon, that the proprietor or incoming tenant shall have full power and liberty to sow grass seeds in due time with the last crop under this tack; and the said A. W. hereby binds and obliges himself and his foresaids to harrow and roll in the same when required, the land being in fit condition for that purpose, without any allowance therefor, he getting a similar advantage on his entry. And the said J. S. binds and obliges himself and his foresaids, to put into sufficient and tenantable condition, the steading now upon the farm, and also to build a barn, an engine house, and a stalk for a threshing mill, on the tenant's entering to possession of these subjects. And farther, he binds and obliges himself and his foresaids, before the expiry of the year 1850, to put the farm house into a sufficient and tenantable condition; as also, if practicable, to bring water to the steading. And thereafter the said A. W. hereby binds and obliges himself and his foresaids to maintain the whole houses and buildings erected and to be erected at his own expense in good condition and repair, during the currency of this tack, and leave them so at his removal. And as to the cot houses, it is hereby provided, that the tenants shall only be bound to leave them in such repair as he receives them. And it is hereby provided, that the said A. W. shall be bound, and he hereby binds and obliges himself and his foresaids, to maintain and at all times keep in repair at his own expense, the whole stone dykes upon the farm, and such number of gates as the landlord shall allow him; and it is hereby provided that all the other fences and ditches, except the march fences, shall be maintained and kept in repair by a hedger, to be selected by the landlord for this sole purpose, whose wages shall be paid mutually by the landlord and tenant; and the said J. S. agrees farther to be at the half of the expense of any occasional assistant to the hedger that may be required, but the amount chargeable against the tenant for this purpose



shall not exceed annnally 20*l*. in whole, to which his liability is hereby restricted: And in regard to the march fences it is hereby provided that the same shall be fenced with paling when necessary, at the joint expense of the landlord and tenant: And it is hereby provided, that in all cases where paling for fences may be required, the price thereof shall be borne equally by the landlord and tenant, the tenant leading the same: And the said J. S. binds and obliges himself and his foresaids at their own expense to make a hedge fence along the parish road to the west of the farm steading, with a suitable paling on each side of it, and which is to be maintained during the currency of this tack, at the mutual expense of the landlord and tenant: And further the said J. S. binds and obliges himself and his foresaids to embank the water of the river in all places where, in his opinion, embankments may be required; and in order to prevent injury to the banks it is hereby stipulated and provided that it shall not be in the power of the tenant to plough any part of the lands adjoining the river within three yards of the water of S.: And farther the said J. S. hereby agrees to allow the tenant 500*l*. for the purpose of purchasing tiles and soles for draining, at such times as the tenant may require them, and the said A. W. shall be bound to cart them, cut and fill the drains, and lay the tiles and soles at his own expense, to the landlord's satisfaction; as also the said A. W. binds himself and his foresaids to lend all the necessary carriages for the new buildings, fences, or embankments: And it is hereby agreed that the said A. W. shall be bound to take the threshing mill at present on the steading and pay the value thereof, as the same shall be ascertained by two neutral men, to be mutually chosen, or by an oversman to be named as aforesaid; and on the other hand it is agreed that at the expiry of this tack, the said A. W. shall be bound to deliver the said mill, or any other which he may erect, to the proprietor or incoming tenant, on payment of the value thereof, as the same shall then be ascertained as aforesaid: And it is hereby provided that the said A. W. shall not have the power to drain the Loch, or to injure the fish therein, in any way: And it is also hereby agreed that the said A. W. shall have the use of the road leading from the B. road, eastward to J. K.'s

house, he always paying a fair share of the expense of upholding the same : And whereas the said R. M. is to be allowed potato grounds for hinds and cottars in the last year of his lease, on condition of their furnishing sheaves for the harvest of that year, it is provided that the said A. W. shall be entitled to the same accommodation, on the same terms, in the last year of this tack : And further in respect the said A. W. is to allow the said R. M. grass in S. Waters, and straw to Whitsunday, 1850, for two or three cows, without payment, he shall be allowed the same privilege in the last year of this lease. Further the said J. S. binds and obliges himself and his foresaids to insure the houses against injury by fire, to the extent of 1000*l.* ; and also the crop and stock on the farm to the extent of 1000*l.* : And the said A. W. binds and obliges himself and his foresaids to repay the premiums of the said insurance to the said J. S., with the next term's rent thereafter : And it is hereby specially provided and declared that if the said A. W. or his foresaids shall become bankrupt in terms of law, or be sequestrated, or voluntarily divest themselves of his or their effects, then and in any of these cases it shall not be competent to the said A. W. or his foresaids to carry on this lease, either by themselves, or by a manager for behoof of creditors, but the same shall, in the option of the said J. S. or his foresaids, become void and null : And the said A. W. binds and obliges himself and his foresaids to flit and remove himself, his wife, bairns, family, servants, goods and gear furth and from the said possession at the expiry of this tack, and to leave the same void and redd to the effect the said J. S. and his foresaids may enter thereto, and peaceably possess and enjoy the same in all time coming, and that without any previous warning or process of removing to be used against him for that effect : And declaring always, as it is hereby specially provided and declared, that if during the currency of this tack the said A. W. or his foresaids shall suffer two terms of the tack duty to run into a third unpaid, then and in that case this tack shall in the option of the proprietor *ipso facto* become void and null for the remaining years thereof, as if the same had never been made or granted : And it shall be lawful to and in the power of the proprietor to remove the said A. W. or his foresaids from the said lands

summarily without any process at law immediately after the said term is elapsed: And lastly, the said J. S. and A. W. bind and oblige themselves and their foresaids to implement and fulfil the respective parts of the premises to each other under the penalty of 500*l.* sterling to be paid by the party failing to the party observing or willing to observe the same over and above performance: And the parties hereto consent to the registration hereof in the books of council and session, or others competent therein to remain for preservation, and that all execution needful on a charge of six days may pass on a decree to be interponed hereto in form as effeirs, and to that end constitute

Their procurators, &c.

In witness whereof.

#### FORM OF LEASE, No. 11.

*Lease from James Hunter to James Stuart for Nineteen Years (adapted from a Lothian Lease), of Farm, with Commons, &c., reserving Thirledge, &c.*

[Commencement, parties, and demise, as before, Form, No. 1.]

- |                  |  |
|------------------|--|
| 1. Parcels.      | All the lands of the farm called the Grange, in the parish of _____ in the county of _____, with the dwelling-house and other houses and buildings built thereon as now possessed by John Scott [the outgoing tenant], consisting of _____ acres, imperial,      |
| Common rights.   | or thereabout, with all such rights upon the stinted common of the heath, lying to the east of the said farm in the parish of _____, and county of _____, as are now possessed and enjoyed by the said John Scott, as tenant of the said farm, together with the |
| Seaweed.         | privilege of leading seaweed from the shores of _____, along with the farms of Gatacre, the  |
| Limestone.       | marsh farm, and Hook's farm, and gathering limestone on the said shore for the use of said farm only,  |
| 2. Reservations. | reserving always to the said James Hunter, his heirs   |
| Plantations.     | and assigns, the plantations and woods in and upon   |
| Pasturage.       | the said farm, and the pasturage of the same, as also  |

- Coals, minerals. the whole coal, metals, mines, and minerals, that may be found in or upon the lands hereby demised, and full power and liberty to search for, work, obtain, and carry away the whole coals, metals, mines, minerals, clay, and marl, in and upon the lands hereby let, and to do every other thing on said lands necessary for these purposes. Also to resume for any purpose any part of the said farm not exceeding one twentieth part thereof in whole, the said James Hunter in all cases paying to the tenant such surface damages as he shall thereby sustain, to be fixed and ascertained by two persons to be mutually chosen, who shall have power to name an umpire in the event of their differing in opinion. Also with power to make new roads and railways through the said farm for purposes either connected or unconnected with operations on the said farm, and to shut up or alter the present roads and make new ones, and to regulate and alter the watercourses through the said lands; also to straighten the boundaries, and to exchange with neighbouring proprietors such parts of the said lands as are necessary for that purpose on payment of the damage arising to the tenant according to the difference in value between the land resumed or exchanged, and that added to the farm. To have and to hold the said premises with their appurtenants from the 25th day of March, A.D. 1851, for the term of nineteen years, to be thenceforth peaceably possessed and occupied by the said James Stewart and his fore-saids.
- Marl.
- Resumption of lands.
- Paying surface damages.
- Arbitrators.
- New roads.
- Shut up or alter present roads.
- Water-courses.
- Straighten boundaries, or exchange.
3. Habendum 19 years.
4. Redden-dum.
5. Cove-nants by lessee.
- Rent.
- Outgoer's allowances.
- [*Reddendum as in Form No. 1.*]
- And the said James Stewart doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said James Hunter, his heirs and assigns, in manner following, that is to say :
- [*Covenants to pay rents and taxes as in Form No. 1, then continue as follows.*]
- And also to pay to the said John Scott, the present tenant of the said premises, all sums which shall be

awarded to him, as outgoing allowances of whatever nature or character these may be, upon demand, so soon as the valuation is completed; and to allow him to take his offgoing wheat crop according to the terms of his lease. And also to pay a fifth part more of each payment whether terminal or otherwise as liquidated penalty and expenses in case of failure of payment on the day when the same shall become due, [or, as soon as the same shall be demanded,] and the legal interest of the said payments from the time they become due during the not-payment thereof. And also to lead annually carts of coals to R—— House when required, or pay shillings for each deficient cart; and further the said James Stuart hereby binds and obliges himself and his foresaids constantly to reside with his family and servants on said lands during the currency of this lease; as also he hereby accepts of the whole houses, stone fences, hedges, and gates, and ditches on the said farm, as in good and sufficient tenantable and feasible condition and repair, and he hereby binds himself and his foresaids to uphold them in the like condition during the currency of this tack, and to leave them and also any others that may be made during the lease in the same condition at the expiry thereof or his or their removal therefrom, the landlord being hereby bound to repay the tenant, according as the same shall be instructed by proper accounts, one half of the expense of making and maintaining the hedges and ditches after the same shall have been completed to his satisfaction, but he is to be at no part of the expense of maintaining stone wall, which must at all times be kept in sufficient repair by the tenant and his foresaids. And if at any time during the currency of this lease, the houses, stone fences, and gates, or hedges and ditches, shall be allowed to get into dis-repair, the landlord may require the tenants to repair the same when necessary, and failing the tenant doing so, the landlord shall then have it in his power to employ persons to put

One-fifth penalty, and expenses,

and interest.

Coals.

Reside with family;

Accepts houses and fences, and gates, and ditches in repair; and to uphold;

and leave them, and others.

Landlord paying half of hedges, gates, and ditches to vouchers.

If neglected.

Landlord may repair;

the same into proper order, the expense whereof, as vouched by the tradesmen's accounts, the tenant hereby binds himself to pay without relief of one half along with the next term's rent thereafter to become due. And with respect to the cropping of the said farm, the said James Stuart binds and obliges himself and his foresaids to cultivate, manage, and manure the said farm in a proper and husbandlike manner, and never to scourge or deteriorate the same by undue cropping; and in particular, that he shall never have more than one half of the whole arable land in white crop, and shall at no time without the permission of the landlord in writing take two white crops in succession without a green or black crop intervening, and shall only take one black crop, such as hay, beans, peas, potatoes and the like between grass and grass, as also not to plough or break up from grass any part of the permanent grass lands upon the said farm, nor to sell or put away any of the green or black crops, straw, or dung, except the bean or pea corn, but shall consume on the lands the whole green and black crops, straw and fodder, the last crop of straw excepted, which he shall leave as after-mentioned. And further, the said James Stuart binds himself and his foresaids not to alter the rotation or course of cropping during the last seven years of the lease from what it had been in the previous part thereof, and in particular in the last year of the lease, or of his possession of the said farm in event of his sooner removal, to leave the fallow and green crop, break once ploughed previous to Candlemas, before his removal, without any compensation, and of which the landlord or incoming tenant shall have possession immediately after the said term of Candlemas, as also to leave the part of the farm which falls to be in hay in the year of his removal for a crop of hay to the landlord or incoming tenant to be sown by them with the previous white crop which shall be harrowed in by the said J. S., at his own expense, as also to allow the landlord or incoming tenant to sow grass seeds along with the

tenant paying without relief of half.

6. Culture stipulations;

cropping in husband-like manner;

one-half white;

not two white crops;

without green or black;

between grass and grass;

not to plough meadow and pastures;

not to sell off fodder.

7. Outgoing obligations;

not to alter the rotation in last seven years;

leave fallow once ploughed at Candlemas;

hay to be sown by landlord;

with last crop but one;

and grass seeds with last crop;

waygoing crop on such parts of the farm as come in the rotation, to be sown with grass seeds, which the tenant shall harrow in, as above, at his own expense. And the said J. S. and his foresaids shall be bound to preserve the young grasses from the time of the separation of the white crop till his or their removal at Lady-day ensuing, without allowing any part of their stock to pasture upon or tread down the same, as also to leave the whole straw, chaff, and chaffing of the last crop (y) in steelbow, and to thresh out the same in a regular and timely manner for the use of the proprietor or incoming tenant, and the whole dung of the last crop but one, in so far as the same is not applied to the lands, shall be the property of the landlord or incoming tenant, [they paying a fair price therefor, to be fixed by arbitrators mutually chosen, and an umpire as aforesaid]. And in case the said J. S. or his foresaids shall not adhere to the mode or management hereby prescribed, or shall deviate therefrom in any respect, he hereby covenants for himself and his foresaids to pay 5*l.* sterling of additional rent for each acre of the said lands which he or his foresaids shall manage contrary to the stipulations above written, and that over and above performance; and which additional rent shall not be held to be a penal rent; but a conditional rent, payable at the terms and by the proportions before specified for the year in which such deviation in the mode of management hereby prescribed takes place. And further that the said J. S. covenants for himself and his foresaids to frequent

to be preserved by tenant;

straw, &c. steelbow.

a. Thirlage. the mill of Rothdale with all his grindable corns, pay the usual multures and mill dues therefor, and perform the accustomed mill services conformably to use and wont so long as the said J. H. chooses; but if he chooses to relieve the tenant of said thirlage, and allow the mill to be converted to other purposes, he shall be at liberty to do so without any charge, and the tenant shall be free from this thirlage. And it is

(y) I believe the term is not known in England; it means appurtenant to the farm.

9. Provision  
for re-  
entry.

hereby specially provided and declared that if the said J. S. or his foresaids shall become bankrupt or insolvent, or if any writ of execution be executed or distress levied, and sold or taken off the said premises; or if the said James Stuart or his foresaids shall voluntarily divest themselves of his or their effects, then and in any of these cases it shall not be competent for the said James Stuart or his foresaids to carry on this lease, either by themselves or a manager for behoof of creditors or otherwise, but the same shall in the option of the said James Hunter or his foresaids become void and null, and the said James Hunter and his foresaids may re-enter the premises

10. Game,

and the same have again, repossess, and enjoy: And the said James Stuart further binds and obliges himself and his foresaids to protect the game on the said lands for the said James Hunter and his foresaids, or any person whom they may authorize to hunt or shoot over the same: And further (z) it is hereby

11. Provisions of  
lease may  
be varied by  
parol agree-  
ments.

specially provided and declared that in case the said James Stuart or his foresaids should not in writing require the said James Hunter or his foresaids to fulfil the stipulations incumbent on them before mentioned or any of them, but should ask the said James Hunter or his foresaids to make some other improvement on said farm, or alterations of the provisions of this lease, then and in that case it shall be competent to the said James Hunter and his foresaids to set off the presumed expense of the stipulations herein contained, then unexecuted, against the proved expense of the improvement granted to the tenant, or the advantage derived by him from the alteration of the terms hereof without any special agreement to that effect: And the said James Stuart binds and obliges himself and his foresaids to quit and remove themselves, their family, servants, and dependants, goods and gear, from the said lands at the expiration, or other

12. To quit.

effect: And the said James Stuart binds and obliges himself and his foresaids to quit and remove themselves, their family, servants, and dependants, goods and gear, from the said lands at the expiration, or other

(z) This appears to be a very loose and dangerous relaxation. I give the clause, however, as I find it.



sooner determination of this lease, without any warning or process of removal to that effect, otherwise to pay double of the rent before specified for each year, or portion of a year, they shall so remain after the foressaid period, besides all damages to incoming tenant, reserving for the use of the tenant two cottages, the barn, and        stalls in the stable until the day of        for the purpose of threshing out the crop in the year of their removal. [*Insert covenants by landlord that tenant shall take his awaygoing wheat crop, (see p. 261, or p. 298, ante), and proviso that the tenancy under this lease shall not be affected by any custom of the country.*]

## FORM OF LEASE, No. 12.

*Short Lease under the Stat. 8 & 9 Vict. c. 124.*

[I have inserted this form, and have also printed the Act in the Appendix, but the object of the statute was obviously leases of houses, and the form given is so little suited to the exigencies of a farming contract, that very little brevity is gained, and much confusion is created by the adoption of the statute form. The reader will find the extended covenants which these short abstracts represent, in the schedule to the Act in the Appendix. If, however, the form be used as a precedent, the covenants as to culture, game, incoming and outgoing valuations, custom of the country, &c., must be imported into the lease at full length from the other precedents—for the extension of the operation of the words used in the schedule of the Act, is confined to the twelve covenants and provisoes set forth in that schedule.]

THIS INDENTURE, made the 1st day of January, 1851, in pursuance of an Act to facilitate the granting of certain leases, between A. B. of Burton Mann, in the county of       , esq., of the one part, and C. D. of the Yeo Farm in the said county, of the other part, witnesseth that the said A. B. doth demise unto the said C. D., his executors, administrators and assigns, all that farm called the Grange Farm, situate in the parish of       , in the county of       , and containing by estimation one hundred and twenty-four acres, now in the

occupation of John Smith ; together with all the farm-house buildings and appurtenances in the same manner as the same are now enjoyed by the said John Smith, from the 25th day of March now next ensuing, for the term of twenty-one years thence ensuing : Yielding therefor during the said term the rent of 124*l.*, payable quarterly, if demanded, but if not demanded then half-yearly, at the said A. B.'s audit ; and that the said A. B. covenants with the said C. D., to pay rent and to pay taxes, and to repair, and to insure from fire in the joint names of the said A. B. and the said C. D., to show receipts, and to rebuild in case of fire ; and that the said A. B. may enter and view state of repair and cultivation, and that the said C. D. will repair and amend any faulty cultivation according to notice. That the said C. D. will not assign without leave, and will leave the premises in good repair, and the land in heart, culture, and good condition.

[*Insert Culture Covenants, &c.*]

Proviso for re-entry by the said lessor on non-payment of rent, or non-performance of covenants, or in case the said lessee shall become bankrupt or insolvent, or compound with his creditors, or allow any execution to be levied upon the demised premises. The said A. B. covenants with the said C. D. for quiet enjoyment.

In witness whereof, the said parties hereto have hereunto set their hands and seals.

#### MISCELLANEOUS FORMS.

[It has not been considered necessary to reproduce in extenso the leases in which the following stipulations were found ; as they are in other respects nearly identical with some one of the foregoing forms.]

#### *Reddendum, with Additional Rents (a).*

Yielding and paying the yearly rent of 100*l.*, and also yielding and paying to the said lessor on the days of payment of

(a) This was the form of reddendum in *Bowers v. Nixon*, (Michaelmas, 1848,) L. J. R., 18 Q. B. 35. In that case, Nixon took a

third crop of corn without seeding down, and Bowers brought covenant. It was held, that Nixon was liable to the penal rent of 20*l.* per

the said yearly rent, over and above the same rent, a further yearly rent or sum according to the rate of 20*l.* the acre of grazing land which shall be broken up into tillage by the said lessee during the term of this demise; and also yielding and paying to the said lessor on the days of payment of the said yearly rent first named, over and above the same rent, according to the rate of 20*l.* the acre, of any closes which the said lessor shall underlet, or from which he shall take a third crop of corn without seeding it down; and also yielding and paying to the said lessor on the days of payment of the first-mentioned rent, over and above the same rent, the further yearly rent or sum of 20*l.* the acre, for every acre of land which shall be mown for hay without being manured once at least in every three years. The said several, eventual, and contingent rents, if any such shall become due, to be additional to the first-mentioned rent, and to be paid and payable half-yearly by equal portions: the first payment to be made on the day of payment of the first-mentioned rent which shall first or next happen after such eventual or contingent rent shall have been incurred, and to continue payable thenceforth during all the residue of the term hereby created.

### *Another Form (b).*

Yielding and paying the further yearly rent of 50*l.* for every acre of the fields which are numbered 30, 31, 32, 64, and 67, in the tithe-apportionment map (or which are set forth in schedule (A) to this lease annexed), which shall not for three years before the expiration or other determination of the demise be laid down for grass, and kept down during the remainder of the term; and also for every acre of the lands and hereditaments thereby demised, except the said fields mentioned in the last reservation, which the said lessee shall

acre, during the residue of the term, (and not for one payment or for one year only,) though the branch of the covenant imposing such penalty did not contain the terms "further yearly rent," which were contained in the other branches of such covenant.

(b) This was the form of *reddendum* upon which the case of *Farrant v. Olmuis* (3 B. & Al. 692) proceeded. There the Court held, that upon breach proved, the jury were bound to find for the whole of the additional rent.

plough, dig up, or convert into tillage, the yearly rent of 50*L.* per annum for every acre.

*Reddendum.*—*Wheat Rent*—limited to a *Maximum of Seventy-two Shillings*, and to a *Minimum of Forty Shillings per Quarter*, and to be ascertained by *Prices of Neighbouring Markets* (c).

Yielding and paying the value of two hundred and sixty-five quarters, and four bushels of wheat, as the annual rent for the said farms, lands, and premises, the value of one hundred and thirty-two quarters six bushels of wheat to be paid for each half-year's rent, on the 25th day of March, and the 29th day of September; and the first of such half-yearly payments to be made on the 25th day of March next, and the amount of money to be paid as the value of such respective qualities of wheat to be from time to time ascertained and paid by the average prices of wheat at the Chichester Market, for the half-year ending on the said respective days when such rent shall so become payable as aforesaid, and so that the average value of one hundred and thirty-two quarters six bushels so ascertained as aforesaid shall be deemed and taken as the rent for each such half-year, so nevertheless that if the average price of wheat at the Chichester Market for the half-year ending on either of the days aforesaid shall exceed seventy-two shillings per quarter, or be less than forty shillings per quarter, the rent for such half-year shall be and be taken at the value of seventy-two shillings, or forty shillings per quarter, as the case may be, for one hundred and thirty-two quarters six bushels of wheat, so that the rent for the said farm and lands shall not at any time exceed two hundred and sixty-five quarters and four bushels of wheat of the value of seventy-two shillings per quarter, nor be less than two hundred and sixty-five quarters and four bushels of wheat of the value of forty shillings per quarter in any one year.

(c) As to the expediency of this method of computation, see p. 174, *ante*.

*Reddendum Corn Rent, based upon the Tithe Rent-charge Average.*

Yielding and paying therefor, during the said term, the yearly rent of a sum of money equal in value to twenty-four bushels of wheat, twenty-four bushels of barley, and twenty-four bushels of oats (which rent has been calculated upon a money payment of 50*l.* when the price of wheat is 7*s.* 0½*d.* a bushel, barley 3*s.* 10½*d.* a bushel, and oats 2*s.* 9*d.* a bushel (*d*)), payable half-yearly, on the 25th of March and 29th of September in every year, the said value to be ascertained in every year in manner following, that is to say, the said yearly rent shall be the value of the aforesaid number of imperial bushels of wheat, barley, and oats, at the prices ascertained by the advertisement inserted in the London Gazette in the month of January of every year, under the provisions of the Tithe Commutation Act, stating what has been, during seven years ending on the Thursday next before Christmas-day then next preceding, the average price of an imperial bushel of British wheat, barley, and oats, computed from the weekly average of the corn returns; and the value of the said twenty-four bushels of wheat, twenty-four bushels of barley, and twenty-four bushels of oats, so ascertained as aforesaid, shall be the rent for the year of tenancy current at the time such advertisement as aforesaid appears, and shall be due and payable by equal half-yearly portions on the 25th of March and on the 29th of September next following the appearance of the said advertisement, if the said rent shall be upon those days demanded, and if not demanded, then the said half-yearly portions of rent shall be respectively due and payable at the said [lessor's] audit which shall next occur after the said respective days of payment, the said rent so ascertained as aforesaid to be free from all parliamentary, parochial, and other taxes, &c. &c.

(d) The only object of these words is to make the rent ascertainable by the tithe rent-charge tables. The tithe apportionments have a stated sum, based upon these prices, to which the sliding scale is fitted.

The calculation of 50*l.* to 24 bushels is not exactly accurate; and, in practice, the quantities that represent the sum should be stated in bushels and decimal parts.

[In drawing the above reddendum I have followed, so far as they were appropriate, the words of the Commutation Act. But, in order to avail themselves of the machinery of the Tithe Act, the parties must submit to a seven years' average and the equal influence of the prices of wheat, barley, and oats. Both these conditions however are seldom well adapted to the rents of particular farms, however expedient they may be in a general system which extends throughout England and Wales. The fixed quantities above, placed at twenty-four bushels of each kind of corn, represent (within a fraction) a money rent of 50*l.*, supposing wheat to be at 7*s.* 0½*d.* a bushel, barley 3*s.* 10½*d.*, and oats 2*s.* 9*d.* These are the averages upon which the tithe commutation is based; and the yearly rent may then be readily ascertained by means of the annually published Tithe Rent-charge Tables. In valuing a farm for this corn rent the valuer must take as the basis of his calculations that the prices of wheat, barley, and oats, are as last above stated; and, having worked out his money rent upon this basis, must reduce it into equal quantities of wheat, barley, and oats at those prices. The computation will then be in every year quite simple, with the aid of the tables above alluded to.]

*Covenant that Lessee shall drain, receiving Tiles.*

And also that the said W. F., his executors and administrators, shall and will from time to time, and at all times during the said term, well and effectually drain such of the lands and premises hereby demised as shall from time to time require the same for improvement thereof, on being allowed soughing tiles at the kiln for that purpose.

*Covenant that Lessee shall drain the whole Farm, at his own Expense.*

And the said A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said C. D., his heirs and assigns, in manner following; that is to say, that he the said A. B., or his aforesaid, shall and will, within two years after the date

of this indenture, well and sufficiently, and in a permanent manner, and at his or their own sole cost, drain all such parts of the farm as may require drainage, or the condition whereof may be bettered thereby, and shall complete the same to the satisfaction of two surveyors, one to be appointed by the said A. B., or his aforesaid, and the other by the said C. D., or his aforesaid; or if the said surveyors should disagree, then to the satisfaction of an umpire to be chosen by the said surveyors before they commence their survey: Provided that if, after the expiration of one week's notice, either party should refuse or neglect to appoint a surveyor, or if after like notice either surveyor should refuse or neglect to concur in choosing an umpire, then the surveyor so appointed, or so being ready to concur in the choice of an umpire, shall act alone in such valuation, and his determination and award shall be binding upon both parties. And further, that if such drainage shall not be completed as aforesaid within the time aforesaid, or if it be not sufficiently performed, or if there be any land remaining upon the said farm which in the opinion of the said surveyors or umpire might be bettered in condition by drainage, that then it shall be lawful for the said C. D., or his aforesaid, to cause such drainage to be done and completed under the inspection and direction and control of the said surveyors or umpire, and to pay for the same and for all expenses attending the arbitration according to the award of the said surveyors or umpire, and to recover the same by distress or otherwise as an additional rent reserved upon the said farm, and becoming due immediately after the publication of the award of the said surveyors or umpire. And further, that the said A. B., or his aforesaid, shall, at the end of the term hereby granted, leave the said drainage in good and complete repair and working order without any payment or compensation in respect thereof (d).

*Covenant by Lessee to pay Per-centage upon Outlay for permanent Improvements.*

And the said A. B., &c., &c., that he and his aforesaid

(d) This covenant may be readily adapted to the straightening of fences, or the erecting of beast-houses, machinery, or other permanent improvements.

shall and will pay to the said C. D. and his aforesaid an additional rent payable at the same time as the hereinbefore reserved rents are payable and recoverable in the same manner, whether by distress or otherwise, of ten per cent. (e) upon all moneys which during the continuance of the term may be expended by the lessor in permanent improvements upon the said farm. Such permanent improvements to be made only in accordance with a plan and estimate to be signed by the lessor or his agent, and by the lessee, previous to the commencement of the said works.

*Covenant by Lessee to put the Farm in a state of permanent working Order, the Landlord finding Materials.*

And the said A. B., &c., &c., that he and his aforesaid shall and will, during the first two years of the term hereby granted, thoroughly trench and drain the whole of the said farm wherever such drainage shall be required, and shall straighten all fences and ditches which require straightening, plough up and bring into cultivation all waste land, build beast houses and cattle sheds and other outbuildings, erect a steam engine of        horse power, and do all other matters and things which shall be requisite to put the farm in thorough working order in accordance with the best modern system of high farming, the said C. D., or his aforesaid, finding timber in the rough, and tiles or draining pipes, and delivering the same within three miles of the farm. And the said A. B., for himself and his aforesaid, further covenants with the said C. D. and his aforesaid, that all the said works, buildings, machinery, and others matters shall be made, done, erected, and built of the best materials, and in the best manner, and to the satisfaction of two surveyors, or an umpire to be chosen as hereinafter provided; and that if the whole shall not be completed and the said farm put in such thorough working order as aforesaid at the end of the second year from the commencement of the term hereby granted, to the satisfaction of such surveyors or umpire, that then it shall be lawful for the said C. D., or his aforesaid, to undertake, carry on, and com-

(e) The landlord should charge interest for his money, and the such a per-centage as will give him capital back in twenty years.



plete such works under the inspection and direction, &c. [as in p. 500, *ante*.]

*Covenant for Outgoing Allowances, adapted to Sussex Customs.*

That the said lessee shall, in the year in which this lease shall be determined, prepare and sow thirty acres, part of all the said arable lands, and of average quality, with turnips from fallow well prepared and manured, and shall have the turnips properly cleansed and hoed, for which he shall be paid by the said lessor or other the person or persons entitled as aforesaid, or his or their incoming tenant, a fair valuation to be made as after-mentioned. And the said lessee shall in like manner be paid for the hay on the premises at a feeding-off price; and the said lessee shall also in such last year leave sixty acres, part of all the said arable lands, and of average quality, for a wheat season either in a clover lay or after beans, peas, tares, or green crops, fed off on the same lands or in fallow, in such proportions as the rotation of cropping hereinbefore provided shall admit.

That the respective schedules of the arable lands hereunder written do set forth and show the manner in which the same are respectively sown and left in the year in which this demise commences. And the said tenant shall, at the expiration of the term, be allowed by valuation as after provided a fair compensation for such advantages (if any) as the incoming tenant may derive from the manner in which the farm may then be sown or left in lains as compared with the manner in which the farm was sown and left in lains in the year in which the term hereby granted commenced. And in case the said lessee shall have deteriorated the said land in respect of the state of the sowing or leaving in lains, he shall in like manner pay the said lessor, or other the person or persons entitled as aforesaid, a fair sum for such deterioration.

That the said lessee shall not, on quitting the said farms and lands, be entitled to any allowance for rent and taxes of that part of the land which shall have been in fallow the last year of his tenancy.

That the said tenant shall be allowed to hold possession of the barns and granary till the 15th day of May following the

expiration of the term hereby created for housing and keeping his corn, which shall be threshed out and carried to market any distance not exceeding seven miles from the said demised premises at the expense of the said lessor, or other the person or persons entitled as aforesaid, for which he and they shall be entitled to retain and keep the straw, chaff, and lavings produced therefrom; but the expense of manual labour in housing any ricks previous to such threshing shall be paid by the said lessee.

*Covenant for Outgoing Allowances, adapted to the Customs of the Weald of Sussex.*

That all the dung arising from the straw and hay of the harvest of the year preceding the year in which the term hereby granted shall expire, or the tenancy hereby created shall be determined, shall be left in the yards or gate-rooms, or in mixons, or be carried out and spread on the said land, as the said landlord or other the person or persons entitled in remainder or in reversion as aforesaid, or his or their incoming tenant, shall direct; and the said tenant shall be paid for the same, and for the carting, casting, and spreading thereof, and for the lime which shall have been brought on the farm during the summer preceding the expiration of the tenancy (not exceeding four kilns), and for the half-dressing of dung and lime, at a fair valuation to be made in the manner hereinafter provided; and that in such year the said landlord or other the person or persons entitled as aforesaid, or his or their incoming tenant, shall have the right of sowing seeds on the one quarter part of the said arable lands then in rotation for spring corn; and the said tenant shall, if required, cause the seeds so sown to be properly harrowed and rolled in, for which he shall be paid a fair sum to be fixed as hereinafter mentioned.

That the said tenant shall, in the year in which the said term shall expire, or in which the said tenancy shall be determined, make clear fallows of one fourth part of the said arable land of average quality, and prepare and sow such fallows with turnips or green crops, or cultivate them for wheat, as the said landlord or other the person or persons entitled in re-

version or remainder as aforesaid, or his or their incoming tenant, shall direct.

That the said tenant shall, on quitting the said farm and lands, be entitled to an allowance for rent and taxes of such part of the said farm as shall have been in fallow the last year of his tenancy.

That on the 1st day of July preceding the expiration of the term hereby granted, or the determination of the tenancy hereby created, or as near thereto as may be, the said tenant shall plough up and cultivate one third part of the quarter part of the said arable land then in rotation for wheat either for a wheat season for the then ensuing year or otherwise, as the said landlord or other the person or persons entitled in reversion or remainder as aforesaid, or his or their incoming tenant, shall direct, and at the expiration of the said tenancy shall leave one other third part of such last-mentioned quarter of the said arable land in a clover lay after having been cut for hay or fed with stock, but which shall not have been sowed from seed. And that he the said tenant shall, in the last year of the said tenancy, plough and cultivate the remaining one third of such last-mentioned quarter part of the said arable land as the said landlord or other the person or persons entitled in remainder or reversion as aforesaid, or his or their incoming tenant, shall direct, as soon as the crop of beans, peas, or tares shall have been cut and carried therefrom.

That the said tenant shall be allowed to hold possession of the barns and stabling for two horses till the 15th day of May following the expiration of the tenancy hereby created, for housing and threshing out his corn, and that the hay, straw, and haulm produced in the last year of the said tenancy shall be left on the said premises, to be taken by the said landlord or other the person or persons entitled as aforesaid, or his or their incoming tenant, at a dung and fodder price, such price to be fixed by the valuers to be appointed as hereinafter is mentioned.

## FORMS OF SCHEDULES.

*Showing the State of the Cultivation of the Farm at the Commencement of the Lease, and divided according to the Different Rotations of Crops laid down in the Lease.*

References to Tithe Map.	Schedule No. 1.		A.	R.	P.	State of Cultivation at Michaelmas, 1849.
115	West land field in Poling .	Arable	5	3	23	Clear fallow.
114	West land field in Lyminster.	Arable	5	3	14	Ditto.
115	Part of fence field do. .	Arable	3	3	34	Four-lain clover lay.
116	Part of do. do. .	Arable	7	1	33	Ditto.
Schedule No. 2.			25	3	33	
153	Ten acres in Lyminster .	Arable	10	2	0	Wurzel and turnips.
154	Part of 18 acres in do. .	Arable	11	2	19	Oats after barley, and barley after wheat.
157	Thirteen acres in do. .	Arable	13	1	19	Peas, except about 3 acres of clear fallow.
159	Seven acres in do. .	Arable	7	0	6	Four-lain clover lay.
38	Part of 14 acres in Poling .	Arable	5	0	37	Beans, and oats, and peas.
Schedule No. 3.			46	3	1	
156	Long acre in Lyminster .	Arable	7	1	23	Wurzel, oats, and turnips.
72	Footpath field in Poling .	Arable	11	0	20	Barley.
73	Barn field in do. .	Arable	9	2	8	Wheat.
77	Common field in do. .	Arable	20	2	10	Wheat.
76	Croft in do. .	Arable	1	3	31	Old Grass.
123	South common in do. .	Arable	10	3	26	Barley.
204	Poling field in Lyminster .	Arable	16	1	32	Turnips from clear fallow.
117	Barn field in Poling .	Arable	10	3	21	Wheat after oats, the oats after barley, the barley after wheat.
118	West field in do. .	Arable	5	1	24	Barley.
120	Little piece in do. .	Arable	5	0	4	Peas.
131	Great piece in do. .	Arable	7	1	3	Oats.
132	South field in do. .	Arable	7	2	24	Turnips from clear fallow.
205	In Lyminster .	Grass	3	0	3	Old Grass.
206	In do. .	Arable	4	0	8	Wheat.
			121	0	28	

## CHAPTER X.

## ON THE STAMP DUTIES AFFECTING AGRICULTURAL CONTRACTS.

Proposals to take.—Agreements for a Lease.—Leases.

*Proposals to take.*—If the instrument be only a proposal to let land, or to take land, and the acceptance of the proposal was by parol, the paper requires no stamp and may be read in evidence without, for it is neither an agreement nor a minute or memorandum of an agreement, but a mere proposal (a).

*Agreements for a Lease.*—If the form be that of an agreement, and the matter be of the value of 20*l.* and it do not contain thirty common-law folios of 72 words each, or 2160 words, then the duty under the New Stamp Act (13 Vict. c. 97) is 2*s.* 6*d.*

If the agreement contain thirty folios and under forty-five the duty is 5*s.*, and thus it progresses; the agreement stamp being in fact 2*s.* 6*d.* for every complete fifteen folios of words, and nothing for any fractional part of fifteen folios.

The schedule of the New Act is as follows :—

*Agreement*, or any minute or memorandum of agreement, made in England or Ireland under hand only, or made in Scotland without any clause of Registration (not charged otherwise than under the head Agreement in the schedule to the Act 55 Geo. III. c. 184, now expressly exempted from all stamp duty), where the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or endorsed thereon or annexed thereto . . . £0 2 6

And where the same shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein and over and above the first 1080 words, a further progressive duty of . . . . . 0 2 6

(a) *Drant v. Brown*, 3 B. & C. 665; 5 D. & R. 582; *Hearne v. James*, 2 Bro. C. C. 309; and see *Vollans v. Fletcher*, 1 Ex. Rep. 20;

and *Willey v. Parratt*, 18 L. J. 82, Ex., where the same point was decided in the case of applications for railway shares.

The great alteration in the stamp duties thus effected renders the length of an agreement comparatively unimportant. Upon large estates printed forms are nearly always used, and the difference in expense between a long and short document is of course in such cases scarcely appreciable. It is obviously desirable that all the particulars of the tenancy should be minutely stated, and that the language should be so far denuded of legal technicalities that the farmer may be able to learn his rights and obligations from reading his agreement. But under the former Stamp Laws this could scarcely be done; at the one thousand and eighty-first word the duty sprang from 2s. 6d. to 1l. 15s., and ran at the rate of 1l. 5s. for every subsequent fifteen folios. Any well developed statement of the terms of tenancy, such as that of Lord Yarborough in his Lincolnshire agreement, (*vide* p. 357,) would necessitate a stamp of several pounds, and the parties were therefore driven to rely upon uncertain general provisions, dubious customs of the country, and principles of the law of waste unknown to farmers. Under the present Law the longest of the foregoing precedents will not require more than a 10s. stamp. On the other hand, the penalty upon stamping an unstamped agreement is now raised to 10l.

As to the calculation of the number of words in the document there are some decisions which may be briefly alluded to.

An agreement which describes a paper as annexed to it must have the words of the paper counted as part of the agreement (*b*). But nothing is to be taken into account in stamping the instrument except what is written on the paper itself or annexed thereto. In *Attwood v. Small* (*c*), where an agreement referred to a clause in a former agreement, and provided that it should extend to the new agreement as if it had been repeated therein, it was held that the clause referred to could not be considered as "annexed to" the new agreement so as to make an additional stamp necessary; and in *Sneezum v. Marshall* (*d*), where an agreement stated that the sale agreed for was "subject to the covenants set forth in a draft lease delivered this day," it was held that the words of

(*b*) *Veals v. Nichols*, 1 M. & R. 248.

(*c*) 7 B. & C. 390.

(*d*) 7 M. & W. 417.

the covenants so referred to were not to be reckoned in calculating the amount of stamp duty.

The words of the schedule upon which these cases were decided ran, "any agreement, or any minute or memorandum of an agreement, made in England under hand only, or made in Scotland without any clause of registration (and not otherwise charged in the schedule, nor expressly exempted from all stamp duty), when the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or indorsed thereon or annexed thereto, shall have," &c., &c.

The same words are adopted in the schedule to the New Stamp Act, but the 11th sect. contains a special provision as to the construction of these words. It is as follows:—

And whereas, by the several Acts now in force relating to the stamp duties as well as by this Act, certain stamp duties called progressive duties are imposed upon deeds and instruments in respect of certain quantities of words contained therein, together with any schedule, receipt, or other matter put or endorsed thereon or annexed thereto: and whereas doubts are entertained whether such progressive duties are chargeable on any deed or instrument in respect of the words contained in any other deed or instrument liable to stamp duty and duly stamped which may be put or endorsed upon, or annexed to, or referred to in or by such first-mentioned deed or instrument, and it is expedient to remove such doubts: Be it therefore declared and enacted, that the said progressive duties shall not be deemed or held to be or to have been imposed or chargeable upon any deed or instrument in respect of the words or any quantity of the words contained in any other deed or instrument liable to stamp duty and duly stamped which may be or may have been put or endorsed upon or annexed to such first-mentioned deed or instrument, or which may be or may have been in any manner incorporated with or referred to in or by the same.

As to schedules or conditions of culture which are not annexed to the instrument, the words of the schedule to the new statute are as follows:—

*Schedule, inventory, or catalogue of any lands, hereditaments, or heritable subjects, or of any furniture, fixtures, or other goods or effects, or containing the terms and conditions of any proposed sale, lease, or tack, or the conditions and regulations for the cultivation or management of any farm*

*lands* or other property leased or agreed to be leased, or containing any other matter or matters of contract or stipulation whatsoever, which shall be referred to in or by and be intended to be used or given in evidence as part of or as material to any agreement, lease, tack, bond, deed, or other instrument charged with any duty, but which shall be separate and distinct from and not indorsed on or annexed to such agreement, lease, tack, bond, deed, or other instrument;

Where any such schedule, inventory, or catalogue shall be so referred to in or by any such agreement, lease, tack, bond, deed, or other instrument chargeable with any stamp duty not exceeding 10s. exclusive of progressive duty,—the same duty (exclusive of progressive duty) as shall be so chargeable on such agreement, lease, tack, bond, deed, or other instrument.

And where any such schedule, inventory, or catalogue shall be referred to in or by any lease, tack, bond, or such other instrument as aforesaid, chargeable with any stamp duty exceeding 10s. exclusive of progressive duty £0 13 0

And if in any of the said cases such schedule, inventory, or catalogue shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words,—a further progressive duty of the same amount as the duty hereinbefore charged thereon respectively.

In *Strutt v. Robinson* (e) it was held that an expired lease duly stamped was not a schedule, inventory, or catalogue requiring the stamp designated by this schedule. But this point has been already dealt with by sect. 11, above quoted.

The agreement duties apply to agreements made under hand only. If therefore the instrument be sealed it must be stamped with a deed stamp (f).

The third section of the Stamp Act expressly reserves all present exemptions. Therefore memorandums or agreements for granting leases or tacks at rack rent of any messuage, land, or tenement, under the yearly rent of 5*l.*, are exempted from duty. But this exemption will not extend to beneficial interests, as if the lease be a building lease (g).

*Leases for Years.*—Under the New Stamp Act the expense of stamping a lease is by no means so formidable as it was

(e) 3 B. & Ad. 375.

(g) See *Doe d. Hunter v. Bou-*

(f) See *Clayton v. Burtenshaw*, 2 Esp. 595.  
5 B. & C. 41.



before, and the advantages of an agreement over a lease in the article of expense are very considerably diminished.

In general terms and in round figures it may be stated that the duty upon a lease is now 10*s.* for every 100*l.* of rent, with an additional 10*s.* for every fifteen folios after the first two, and that the duplicate or counterpart requires a 5*s.* stamp with an extra 2*s.* 6*d.* stamp for every fifteen folios after the first two.

The words of that part of the schedule of the Stamp Act which applies to leases is as follows, and it will be observed that this statute for the first time contains new provisions applicable to corn and produce rents:—

*Lease or Tack of any lands, tenements, hereditaments, or heritable subjects, granted in consideration of a sum of money by way of fine, premium, or grassum, paid for the same, without any yearly rent, or with any yearly rent under 20*l.*,—the same duty as for a conveyance on the sale of lands for a sum of money of the same amount.*

For the duty thereon, see *Conveyance*.

(Save and except leases and tacks for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted, and leases for a term absolute not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole, where the duties on such leases and tacks respectively would, under the provisions of this Act, amount to 1*l.* 15*s.* or upwards.)

*Lease or Tack of any lands, tenements, hereditaments, or heritable subjects at a yearly rent, without any sum of money by way of fine, premium, or grassum paid for the same;*

Where the yearly rent shall not exceed 5 <i>l.</i> . . . . .	£0	0	6
And where the same shall exceed 5 <i>l.</i> and not exceed 10 <i>l.</i> . .	0	1	0
And where the same shall exceed 10 <i>l.</i> and not exceed 15 <i>l.</i> .	0	1	6
And where the same shall exceed 15 <i>l.</i> and not exceed 20 <i>l.</i> .	0	2	0
And where the same shall exceed 20 <i>l.</i> and not exceed 25 <i>l.</i> .	0	2	6
And where the same shall exceed 25 <i>l.</i> and not exceed 50 <i>l.</i> .	0	5	0
And where the same shall exceed 50 <i>l.</i> and not exceed 75 <i>l.</i> .	0	7	6
And where the same shall exceed 75 <i>l.</i> and not exceed 100 <i>l.</i> .	0	10	0
And where the same shall exceed 100 <i>l.</i> then for every 50 <i>l.</i> and also for any fractional part of 50 <i>l.</i> . . . . .	0	5	0

*Lease or Tack of any lands, tenements, hereditaments, or heritable subjects, granted in consideration of a sum of money by way of fine, premium, or grassum, and also of a*

yearly rent amounting to 20*l.* or upwards,—on the ad valorem duties payable for a lease in consideration of a fine only and for a lease in consideration of a rent only of same amount.

(Save and except the leases and tacks hereinbefore excepted.)

*Lease or Tack* of any mine or minerals, or other property of a like nature, either with or without any other lands, tenements, hereditaments, or heritable subjects, where any portion of the produce of such mines or minerals shall be reserved to be paid in money or kind.

*If it shall be stipulated that the value of such portion of the produce shall amount at least to a given sum per annum, or if such value shall be limited not to exceed a given sum per annum, to be specified in such lease or tack, then the said ad valorem duty on leases shall be charged in respect of the highest of such sums so given or limited for any year during the term of such lease or tack.*

*And where any yearly sum shall be reserved in addition to or together with such produce, relative to the yearly amount or value of which produce there shall be no such stipulation or limitation as aforesaid, the said ad valorem duty shall be charged in respect of such yearly sum.*

*And where both a certain yearly sum and also such produce relative to the yearly amount or value of which there shall be such stipulation or limitation as aforesaid shall be reserved, the said ad valorem duty shall be charged on the aggregate of such yearly sum, and also of the highest yearly amount or value of such produce.*

*General Regulations as to leases and tacks:* Where, in any of the aforesaid several cases of lease or tack, any fine, premium, or grassum, or any rent, payable under any lease or tack, shall consist wholly or in part of corn, grain, or victual, the value of such corn, grain, or victual shall be ascertained or estimated at and after any permanent rate of conversion which the lessee may be specially charged with, or have it in his option to pay; and if no such permanent rate of conversion shall have been stipulated, then in England and Ireland respectively at and after the prices, upon an average of twelve calendar months preceding the 1st day of January next before the date of such lease or tack, of the average prices of British corn published in the London Gazette, in the manner directed by any Act in force for the commutation of tithes in England and Wales: and in Scotland at and after the fiars prices of the county in which the lands or any part thereof lie, upon an average of seven years preceding the date of such lease or tack; and such respective values shall be

deemed and taken to be the fine, premium, or grassum, or yearly rent, or part thereof respectively, as the case may be, in respect whereof the ad valorem duty shall be charged as aforesaid.

And where separate and distinct fines, premiums, or grassums shall be paid to several lessors, being joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors pro indiviso in Scotland, who shall by one and the same deed or instrument jointly or severally demise or lease the lands, tenements, hereditaments, or heritable subjects of which they are such joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors pro indiviso in Scotland, or where separate and distinct rents shall be by one and the same deed or instrument reserved or made payable, or agreed to be reserved or made payable, to the lessor or to several lessors, being such joint tenants, tenants in common, or coparceners, in England or Ireland, or proprietors pro indiviso in Scotland, the ad valorem duties shall be charged in respect of the aggregate amount of such fines, premiums, or grassums, and of such rents respectively.

And where any person, having contracted for, but not having obtained, a lease of any lands or other property, shall contract to sell such lands or other property, or any part thereof, or his right or interest therein or thereto, to any other person, and a lease shall accordingly be granted to such other person, the purchase-money or consideration which shall be paid or given, or agreed to be paid or given, to the person immediately selling to such lessee shall be set forth in such lease, and such lease shall be charged as well with the said ad valorem duty on such purchase-money or consideration as with the duty on the purchase-money or consideration or rent paid or reserved to the lessor.

*Lease or tack, of any kind, not otherwise charged . . . £1 15 0*

*Provided always, that no ad valorem duty shall be chargeable in respect of any penal rent, or increased rent in the nature of a penal rent, reserved in any such lease or tack as aforesaid.*

*Lease.*—Any assignment or surrender of a lease or tack upon any other occasion than a sale or mortgage,—a duty equal to the ad valorem duty with which a similar lease or tack would be chargeable under this Act.

Provided always, that where a similar lease or tack would be chargeable under this Act with any stamp duty amounting to 1*l.* 15*s.* or upwards, then such assignment or surrender shall be chargeable only with a duty of . . . 1 15 0

L L

Provided also, that no stamp duty, except the said ad valorem duty, shall be chargeable for or in respect of any lease, whether in possession, reversion, or remainder, expressed to be granted in consideration of the surrender of an existing lease and also of a sum of money.

And in all the said several cases of lease or tack, see *Progressive Duty*.

Duplicates and counterparts are chargeable as follows :—

*Duplicate or Counterpart* of any deed or instrument of any description whatever, chargeable with any stamp duty or duties, either under this schedule or any other Act or Acts now in force;

Where such stamp duty or duties chargeable as aforesaid (exclusive of progressive duty) shall not amount to the sum of 5s.—the same duty or duties as shall be chargeable on the original deed or instrument, including the progressive duty thereon (if any).

Where the same (exclusive as aforesaid) shall amount to the sum of 5s. or upwards . . . . . £0 5 0

And where in the latter case any such deed or instrument, together with any schedule, receipt, or other matter put or endorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, such duplicate or counterpart shall be charged with the further progressive duty of . . . . 0 2 6

Provided always, that in such latter case the duplicate or counterpart shall not be available unless stamped with a particular stamp for denoting or testifying the payment of the full and proper stamp duty on the original deed or instrument, which said particular stamp shall be impressed upon such duplicate or counterpart, on the same being produced, together with the original deed or instrument, and on the whole being duly executed and duly stamped in all other respects.

Progressive duties on leases are governed by the following part of the schedule :—

*Progressive duty* : that is to say,—Where any deed or instrument of any description whatever chargeable with any stamp duty either under this schedule or under any other Act or Acts now in force, together with any schedule, receipt, or other matter put or endorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the

first 1080 words, there shall be charged the further progressive duty following: (that is to say,)

Where such deed or instrument shall be chargeable with any ad valorem stamp duty or duties not exceeding in the whole the sum of ten shillings, a further progressive duty equal to the amount of such ad valorem duty or duties.

And in every other case (*except where any other progressive duty is by this schedule expressly charged thereon*), a further progressive duty of . . . . .

£0 10 0

Provided always, that nothing herein contained shall extend to charge the said progressive duty in any case in which express provision is made by any such Act or Acts as aforesaid for charging a certain duty on every skin, sheet, or piece of vellum, parchment, or paper in or upon which any deed or instrument shall be contained or written, or to charge with progressive duty any description of deed or instrument not chargeable with progressive duty under any Act or Acts now in force, or to charge any deed or instrument with any higher rate or amount of progressive duty than is now chargeable on a deed or instrument of the like description under any such Act or Acts as aforesaid.

The exemptions are leases or tacks of waste or uncultivated lands to any poor or labouring persons, for any term not exceeding three lives or ninety-nine years, when the fine shall not exceed 5s. nor the reserved rent one guinea per annum, and the counterparts or duplicates of all such leases.

Leases, counterparts, and agreements by the Commissioners of Woods and Forests, (by 10 Geo. IV. c. 50, s. 77,) certain leases from the Duchy of Cornwall for a period not exceeding a year, (by 7 & 8 Vict. c. 65, s. 43,) and leases made in pursuance of the New Poor Law Act, (4 & 5 Vict. c. 76,) are exempt from duty,

If the instrument amount to a lease, whether it be only signed or only sealed, or both, the duty imposed by the statute on leases will equally apply (*h*).

In farming leases with additional rents reserved it was never usual to take any account of such rents in computing the stamp, nor does it appear to have been decided whether any additional stamp would be required if such an additional rent should accrue due, and the lease should be required to be put in evidence to prove it. The opinion and practice of the

(*h*) *Goodtitle v. Way*, 1 T. R. 735.

profession was that no such additional stamp was necessary (i). There would be the same difficulty in providing for such cases beforehand as there would be in requiring an extra stamp for a covenant for improvements, which was decided not to be necessary in the case last quoted.

It will be observed that the new statute professes to provide for this by a special declaration that no *ad valorem* duty shall be chargeable in respect of any penal rent or increased rent in the nature of penal rent. But as all the Scotch leases and many of the English leases specially provide that the additional rent shall not be considered to be in the nature of a penal rent, (see provisions, pp. 476, 483, ante,) it may be questionable how far these words of the statute remove the difficulty.

The act, however, has another provision (sect. 14) which will meet this and all similar cases. Upon payment of a fee of 10s. the Commissioners of Inland Revenue are directed to assess the stamp duty and stamp the instrument as duly stamped. An appeal is given (by sect. 15) from the decision of the Commissioners to the Court of Exchequer.

As to the calculation of the number of words in the instrument the same rules will apply as have been already stated in treating of stamping agreements.

(i) See *Nicholls v. Cross*, 14 M. & W. 42; and *Wilson v. Smith*, 12 M. & W. 401; 1 D. & L. 633.

## APPENDIX, No. 1.

8 & 9 VICT. c. 124.

*An Act to facilitate the granting of certain Leases.*

[8th August, 1845.]

Where the words of column I. of the second schedule employed, the deed to have the same effect as if words of column II. were inserted.

WHEREAS it is expedient to facilitate the leasing of lands and tenements: be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That whenever any party to any deed made according to the forms set forth in the first schedule to this Act, or to any other deed which shall be expressed to be made in pursuance of this Act, shall employ in such deed respectively any of the form of words contained in column I. of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column II. of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party; but it shall not be necessary in any such deed to insert any such number.

Deed to include all houses, &c.

Sect. 2. That every such deed, unless any exception be specially made therein, shall be held and construed to include all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever, to the lands and tenements therein comprised belonging or in anywise appertaining.

Remuneration for deed under the act not to be by length only.

Sect. 3. That in taxing any bill for preparing and executing any deed under this Act it shall be lawful for the taxing officer and he is hereby required, in estimating the proper sum to be charged for such transaction, to consider, not the length of such deed, but only the skill and labour employed, and responsibility incurred, in the preparation thereof.

Deed failing to take effect by this act to be as valid as if act not made.

Sect. 4. That any deed or part of a deed which shall fail to take effect by virtue of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made.

Construc-  
tion clause.

Sect. 5. That in the construction and for the purposes of this Act, and the schedules hereto annexed, unless there be something in the subject or context repugnant to such construction, the word "lands" shall extend to all tenements and hereditaments of freehold tenure, and to such customary lands as will pass by deed, or deed and surrender, and not by surrender alone, or any undivided part or share therein respectively; and every word importing the singular number only shall extend and be applied to several persons or things, as well as one person or thing, and the converse; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "party" shall mean and include any body politic or corporate or collegiate, as well as an individual.

Schedules,  
&c., part of  
act.

Sect. 6. That the schedules, and the directions and forms therein contained, shall be deemed and taken to be parts of this Act.

Commence-  
ment of act.

Sect. 7. That this Act shall commence and take effect from and after the 1st day of October.

Act not to  
extend to  
Scotland.

Sect. 8. That this Act shall not extend to Scotland.

## SCHEDULES TO WHICH THIS ACT REFERS.

### THE FIRST SCHEDULE.

This indenture made the                      day of                      one thousand eight hundred and forty-                      [or other year], in pursuance of an act to facilitate the granting of certain leases, Between [*here insert the names of the parties, and recitals, if any*] witnesseth, that the said [lessor] or [lessors] doth or do demise unto the said [lessee] or [lessees], his [or their] executors, administrators, and assigns, all, &c. [parcels], from the                      day of                      for the term of                      thence ensuing, yielding therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

### THE SECOND SCHEDULE.

#### *Directions as to the Forms in this Schedule.*

1. Parties who use any of the forms in the first column of this schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.
2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.
3. Such parties may fill up the blank spaces left in the forms 4 and 5, in the first column of this schedule so employed by them, with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.
4. Such parties may introduce into or annex to any of the Forms in the first



column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised shall be of freehold tenure the covenants 1 to 10 shall be taken to be made with and the proviso 11 to apply to the heirs and assigns of the lessor, and where the premises demised shall be of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns.

COLUMN I.	COLUMN II.
1. That the said [lessee] covenants with the said [lessor] to pay rent;	1. And the said lessee doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor, that he the said lessee, his executors, administrators, and assigns, will during the said term pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.
2. and to pay taxes;	2. And also will pay all taxes, rates, duties, and assessments whatsoever, whether parochial, parliamentary, or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor, on account thereof (excepting land tax, and excepting, in Ireland, tithe rent-charge and such portion of the poor rate as the lessor is or may be liable to pay, and excepting also all taxes, rates, duties, and assessments whatsoever, or any portion thereof, which the lessee is or may be by law exempted from).
3. and to repair;	3. And also will during the said term well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair, together with all chimney pieces, windows, doors, fastenings, water closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks, and keys, and all other fixtures and things which at any time during the said term shall be erected and made, when, where, and so often as need shall be.
4. and to paint outside every year;	4. And also that the said lessee, his executors, administrators, and assigns, will in every year in the said term paint all the outside wood-work and iron-work belonging to the said premises, with two coats of proper oil colours, in a workmanlike manner.
5. and to paint and paper inside every year;	5. And also that the said [lessee], his executors, administrators, and assigns, will in every year paint the inside wood, iron, and other works now or usually

COLUMN I.	COLUMN II.
<p>6. and to insure from fire in the joint names of the said [lessor] and the said [lessee];</p> <p>to show receipts;</p> <p>and to rebuild in case of fire.</p>	<p>painted with two coats of proper oil colours in a workmanlike manner; and also re-paper with paper of a quality as at present, such parts of the premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.</p> <p>6. And also that the said lessee, his executors, administrators, and assigns, will forthwith insure the said premises hereby demised to the full value thereof, in some respectable insurance office, in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, or assigns, and keep the same so insured during the said term; and will, upon the request of the said lessor, or his agent, show the receipt for the last premium paid for such insurance for every current year; and as often as the said premises hereby demised shall be burnt down or damaged by fire, all and every the sums or sum of money which shall be recovered or received by the said [lessee], his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt down or damaged by fire as aforesaid.</p>
<p>7. And that the said [lessor] may enter and view state of repair, and that the said [lessee] will repair according to notice.</p>	<p>7. And it is hereby agreed, that it shall be lawful for the said lessor, and his agents, at all seasonable times during the said term, to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises; and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns, will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.</p>
<p>8. That the said [lessee] will not use premises as a shop.</p>	<p>8. And also that the said lessee, his executors, administrators, and assigns, will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose, or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.</p>
<p>9. And will not assign without leave.</p>	<p>9. And also that the said [lessee] shall not nor will during the said term assign, transfer, or set over, or</p>

## COLUMN I.

## COLUMN II.

10. And that he will leave premises in good repair.

11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.

12. The said [lessor] covenants with the said [lessee] for quiet enjoyment.

otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, or set over, unto any person or persons whomsoever, without the consent in writing of the said [lessor], his executors, administrators, or assigns, first had and obtained.

10. And further, that the said [lessee] will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear, and damage by fire, only excepted.

11. Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor, at any time thereafter, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, re-possess, and enjoy as of his or their former estate, any thing hereinafter contained to the contrary notwithstanding.

12. And the lessor doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they, paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

## APPENDIX, No. 2.

### FORM OF VALUATION.

[This form is taken from *Bayldon on Rents and Tillages*, 6th edit. p. 223, where several other forms adapted to other kinds of cultivation will be found. I have hazarded some doubts (*ante*, p. 180,) as to the soundness of some of the calculations for rent contained in this work; but, upon the subject of tenant-right valuations, it appears precise and trustworthy.]

*Valuation of Tillages and Manure on a Farm of thin Soil, and in a high Latitude, 29th Sept. (a).*

The farm is tithe free, and consists of—

	A.	R.	P.	
Near Common Field	4	3	0	Fallow.
Middle ditto . . .	5	2	10	Oat-stubble seeds.
Far ditto . . .	4	2	12	Seeds 2nd year.
Near Bent . . .	3	3	0	Clover-ley wheat.
Far ditto . . .	4	2	0	For fallow.
Hollin Field . . .	4	3	0	Turnips.
Near Bush Field . .	5	1	10	Seeds 2nd year.
Far ditto . . .	6	2	8	Pasture.
Dike Field . . .	4	3	10	Oats after wheat.
	<u>44</u>	<u>2</u>	<u>10</u>	

Rent and Taxes per acre.

	£	s.	d.
Rent . . . . .	50	0	0
Assessments, 3s. in the pound on 45l. .	6	15	0
	<u>£56</u>	<u>15</u>	<u>0</u>

Divided by 44 A. 2 R. 10 P. gives 1l. 5s. 6d. rent and taxes per acre.  
The fences are not included in the measurement.

(a) The incomer pays for all tillages, and takes the crops on the ground at a valuation. If the crop were threshed by the outgoer, and the straw valued to the

incomer at a consuming price, the amount of valuation would be reduced about one-third.

A.	B.	P.		£	s.	d.	£	s.	d.
4	3	0	Near Common Field. Fallowed.						
			4 Dressings, at 13s. . . . .	£2	12	0			
			Rent and taxes . . . . .	1	5	6			
			Per acre . . . . .	£3	17	6	18	8	1
			16 chaldrons of lime, at 13s. 6d. . . . .		10	16	0		
			Carrying 12 miles, at 1s. per chaldron, per mile . . . . .		9	12	0		
									38 16 1
5	2	10	Middle Common Field. Seeds half-tillage.						
			2 Dressings, at 13s. . . . .	£1	6	0			
			Half of rent and taxes . . . . .	0	12	9			
				£1	18	9	10	15	6
			Half of 50 loads of dung, at 10s. . . . .		12	10	0		
			2 qrs. of hay-seeds, at 30s. . . . .		3	0	0		
			40 lbs. of clover seeds, at 6d. . . . .		1	0	0		
			Sowing and harrowing . . . . .		0	10	0		
									27 15 6
4	2	12	Far Common Field. Grass Seeds, mown. No valuation.						
3	3	0	Near Bent. Clover ley, to sow with Oats. Allowance for tillages, at 50s. per acre . . . . .						9 7 6
4	2	0	Far Bent. For Fallow.						
4	3	0	Hollin Field. Turnips, ridded, pared, and burned.						
			Rent and taxes, at 1l. 5s. 6d. per acre . . . . .	6	1	1			
			Ridding, at 7l. per acre, and paring and burning, at 1l. 4s. . . . .	38	19	0			
			Ploughing and sowing turnips, at 16s. per acre . . . . .	3	16	0			
			Turnip-seed, 10 lbs. at 9d. . . . .	0	7	6			
			Hoeing, 10s. per acre . . . . .	2	7	6			
			One half value of crop, at 80s. . . . .	9	10	0			
									61 1 1
5	1	16	Near Bush. Grass-seeds, mown.						
			50 loads of rotten dung, at 10s. . . . .	25	0	0			
			15 chaldrons of lime, half-tillage, at 1l. 5s. 6d. . . . .	9	11	3			
									34 11 3
6	2	8	Far Bush. Grass. Pasture. No valuation.						
4	3	10	Dike Field. Oat-stubble after Wheat.						
			One half of ridding, at 8l. per acre . . . . .	19	5	0			
			Draining, in Dike Field, 45 roods, 3 feet deep, at 1s. 6d. per rood; done three years . . . . .	2	7	3			
									21 12 3
			The corn and straw to be valued.						
5	2	10	Middle Common Field. Oats.						
			32 qrs. of oats, at 20s. . . . .	32	0	0			
			8 tons of straw, at 20s. . . . .	8	0	0			
			Carried forward . . . . .	40	0	0	193	3	8

A.	R.	P.		£	s.	d.	£	s.	d.
			Brought forward . . .	40	0	0	193	3	8
			Deduct threshing, &c., at 2s. 6d. . .	4	0	0			
4	2	0	Far Bent. Wheat-stubble.				36	0	0
			90 bushels of wheat, at 6s. 6d. . .	29	5	0			
			6 tons of straw, at 25s. . .	7	10	0			
				36	15	0			
			Deduct threshing, &c., at 8d. . .	3	0	0			
4	3	10	Dike Field. Oat-stubble.				33	15	0
			25 qrs. of oats, at 1l. . .	25	0	0			
			6 tons of straw, at 20s. . .	6	0	0			
				31	0	0			
			Deduct threshing, &c., at 2s. 6d. . .	3	2	6			
							27	17	6
			12 tons of hay, at 70s. . .	42	0	0			
			6 tons of clover, at 60s. . .	18	0	0			
			Manure, 30 yards, at 4s. . .	6	0	0			
			Ditto, 40 yards, at 3s. 6d. . .	7	0	0			
			Ditto, 30 yards, at 3s. . .	4	10	0			
			Ashes, 4 loads, at 1s. 6d. . .	0	6	0			
			Garden, 25 fruit bushes, at 4d. . .	0	8	4			
			Ditto, 4 loads of dung, at 4s. half-tillage	0	16	0			
			Stone trough, 110 gallons, at 5d. . .	2	5	10			
			Ditto, 72 ditto, at 6d. . .	1	16	0			
			Pump, 14 yards deep, at 12s. 6d. . .	8	15	0			
			Ladder, 21 steps, at 7d. . .	0	12	3			
			Ditto, 30 ditto, at 8d. . .	1	0	0			
							93	9	5
							384	5	7
			Dilapidations:—						
			3 Gates wanting, at 8s. . .	£1	4	0			
			5 Posts, at 2s. 6d. . .	0	12	6			
			50 yards of fencing, at 4d. . .	0	16	8			
			On roofs of houses . . .	0	17	6			
			On dwelling house . . .	1	4	0			
							4	14	8
							379	10	11

# INDEX.

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## ACCOMMODATION.

For servants, horses, and threshing, after determination of tenancy, 216.

Form of reservation of, until 1st of May, 283.

Covenant for, 449.

## ACTION. *See* CASE.

## ADDITIONAL RENTS, 180. *See* RENT.

## AGREEMENT FOR A LEASE. *See* INSTRUMENT OF LETTING—LEASE.

Legal effect of, 144, 147.

Form of proviso as to tenancy under, 309.

When landlord may distrain under, 17, 144.

Stipulations in, govern the tenancy, 144, 146.

Distinction between agreement and lease, 140.

Who are bound by, 148.

What it should contain, 152.

Signature of, 246.

Common practical form of, 248.

(shorter), 253.

Miscellaneous stipulations for, 266.

Special precedents for, 310—400.

not recommended for entire adoption, 310.

Stamping of, 137, 507.

## AGRICULTURAL CUSTOMS. *See* CUSTOM OF THE COUNTRY.

## ALLOWANCES. *See* OUTGOING ALLOWANCES.

## ANGLESEA.

Agricultural customs in, 110.

## APPURTENANCES.

Effect of the word, in instruments of letting, 155.

## ARBITRATION. *See* VALUATION.

Construction of covenant to refer, 229.

Forms of stipulations and covenants, 251, 263, 416.

Special covenants for referring all disputes to, 429.

**ARREARS OF RENT, 171. See RENT.**

**ARSENIC.**

Seed corn not to be steeped in, 414.

**ASHES.**

Allowance for, 227.

**ASSIGNMENT.**

Covenant against, 204.

Construction of, 241.

Forms of:

Exception of labourers' cottages, 370, 426.

Re-entry in case of, after notice and payment for crops, &c., 381.

Absolute, 250, 415, 443.

With special exception in case of death of lessee, 428.

**AWAYGOING CROP.**

Early recognition of the custom, 43.

Statement of the custom in pleading, 44.

Inexpediency of, 120.

Should be purchased by valuation, 292.

Whether the tithe may be deducted, 124.

Construction of covenant as to, 213.

Forms of stipulations as to:

That tenant shall take away, 298, 345.

That landlord shall purchase, 261, 281, 295, 297, 383.

In Lord Yarborough's agreement, 361.

Tenant to lead, 343.

Covenants respecting:

That value of, shall be paid to outgoer, 261, 472.

That outgoer shall have accommodation to thresh and consume last crop, 416.

**BANKRUPTCY. See PROVISIO—RE-ENTRY.**

Forfeiture by, 238, 241.

Forms of stipulations:

Re-entry, on payment for crops, &c., 381.

Re-entry, absolute, 418, 428.

**BARNS.**

Form of covenant that lessee may hold over, 458.

**BEDFORDSHIRE.**

Epitome of agricultural customs in, 53.

Form of agreement in use in, with stipulations for outgoing allowances, 310.

**BERKSHIRE.**

Epitome of agricultural customs in, 54.

Form of lease adapted to, 453.



**BONES.** *See* CUSTOMS.

Allowance for, 227.

Forms of stipulations as to, in Hampshire, 371.

**BREACHES OF COVENANTS.**

Notice of, 242.

Waiver of, 245.

Form of provision as to waiver, 417.

**BREAST PLOUGHING.**

Covenant against, 187.

**BRICKS.** *See* RESERVATIONS.

Form of reservation of right to dig brick earth, and make, 373.

**BUCKS.**

Epitome of agricultural customs in, 55.

**BUILDINGS.**

Insurance of. *See* INSURANCE—FIRE.

Waste of, 22.

Become the property of the landlord, 40.

Allowances for, 219.

Forms of stipulation as to :

Not to erect, 272.

For allowance for, 306.

That tenant shall lead materials, 345.

Forms of covenants :

That lessee shall erect, 423.

That lessee may take down old, 427.

That lessor shall erect, 468, 486.

That lessor shall make allowance for erecting of, 470.

**CAMBRIDGESHIRE.**

Epitome of agricultural customs in, 56.

**CANDLEMAS.** *See* ENTRY.

**CARMARTHENSHIRE.**

Agricultural customs in, 117.

**CARNARVONSHIRE.**

Agricultural customs in, 115.

**CASE.**

Action on the, for waste, 24.

**CATTLE.** *See* STOCK.

**CHALKING,** 227.

**CHESHIRE.**

Epitome of agricultural customs in, 58.

Form of agreement, 373.

With tenant-right, 381.

**CHICORY, 192.****CLAYING LIGHT LANDS, 227.****CLEANLINESS AND GOOD ORDER.**

Form of stipulation for, 390.

**COAL.**

Reservation of right to obtain, 342.

Form of stipulation that tenant shall cart, 369, 482, 491.

**COLE SEED.**

Form of stipulation as to, 370.

**COMMENCEMENT OF TENANCIES.} .**

When fixed by custom, 48.

Lady-day most advantageous, 121, 167.

When fixed by instrument of letting, 167.

Forms of stipulations adapted to the different times of entry, 275  
*et seq.* And see ROTATIONS OF CROPS.

**COPPICES.**

Management of, 157.

Customs as to, in Kent, 75.

Surrey, 95.

Sussex, 97.

Allowances for, 223.

**CORN CROPS.**

Successive, 196.

Stipulations against, 250, 275.

With exception where seeds miss, or after turnips and fallow,  
413, 483.

**CORN RENTS. See RENT.****CORNWALL.**

Epitome of agricultural customs in, 59.

**COTTAGES AND COTTAGERS. See LABOURERS.**

Form of agreement to let, 399.

Form of reservation of, 407.

**COUNTY COURTS.**

Statute, 34.

Double value may be sued for in, *ib.*

Possession may be recovered in, *ib.*

Jurisdiction of, as to determination of tenancy, 36.

**COVENANT. See FORMS.**

What words amount to, 183.

**COVENANT**—*continued*.

## Construction of tenant's covenants :

- to pay rent and taxes, 183.
- to repair, 185.
- to insure, 186.
- as to grass lands, 187.
- as to trees, 188.
- general, as to cultivation, 189.
  - as to incoming payments, *ib*.
- particular, as to cultivation, 190.
  - expediency of, 198.
- against assignment, 204.
- to quit, 208, 209.

## Construction of landlord's covenants :

- for quiet enjoyment, 214.
- for pre-entry to plough, 217.
- for outgoing allowances, 218.

## Construction of mutual covenants, 228.

- for referring differences to arbitration, 229.
- for valuing outgoer's interest, *ib*.
- to be applicable to land afterwards acquired, 359.

## Forms of :

- as to assignment. *See* ASSIGNMENT.
- as to cultivation. *See* ROTATIONS OF CROPS.
- as to manures. *See* MANURE.
- as to outgoing allowances. *See* OUTGOING ALLOWANCES—  
PERMANENT IMPROVEMENTS—BUILDINGS, &c.
- as to repairs. *See* REPAIRS.
- as to rent. *See* RENT.
- as to valuations. *See* ARBITRATION—VALUATIONS.

**CROPS, AWAYGOING.** *See* AWAYGOING CROP.Rotations of. *See* ROTATIONS OF CROPS.

## Growing, when distrainable, 18.

- usual, general view of, 192.
- pulse, 193.
- fallow, *ib*.
- forage, *ib*.
- of last year,

## stipulations as to :

- in Michaelmas tenancies, 278—282, 292.
- in Lady-day tenancies, 283—287, 295, 297, 352.
  - where awaygoing crop taken, 298, 345.
  - where acts of husbandry only paid for, 416.
  - where pre-entry to plough reserved, 465.
- in Whitsunday entries, 472, 485.
- in Martinmas tenancies, 477.

pernicious. *See* WASTE—EXHAUSTING PLANTS.

**CROPPING.**

Schedule of, to be given to landlord, 294, 348.

Covenants as to. *See* ROTATIONS OF CROPS.

**CULTIVATION. *See* ROTATIONS OF CROPS—MANURE—GRASS—HAY, &c.**

General covenants as to, 189.

Particular ditto, 190, 200.

Forms of stipulations :

common practical forms, 250.

collection of miscellaneous, 273, 288.

that disputes as to, shall be referred to arbitration, 429.

that cultivation shall not be changed during the last four years of term, 476.

**CUMBERLAND.**

Epitome of agricultural customs in, 60.

**CUSTOM OF THE COUNTRY. *See* NOTICE TO QUIT—FIXTURES—AWAYGOING CROP—and the names of the respective counties.**

General nature and validity of, 42, 46.

Must be reasonable, 125.

Need not be proved from time immemorial, 46.

Vagueness of, 48, 51.

Early recognition of, by the Courts, 43.

As to awaygoing crops, *ib.*

As to carrying away straw, dung, &c., 45.

As to good husbandry, *ib.*

As to allowances for tillages, &c., 135.

Usual scope of, 46.

Commencement of tenancy, 48.

Usual periods, *ib.*

Right of pre-entry given by, 49.

Outgoing and incoming obligations, *ib.*

Compensation for permanent improvements, *ib.*

Repairs, *ib.*

Management of the farm, 50.

Epitome of, 53—120.

General observations upon, 121.

Impolicy of awaygoing crop, *ib.*

Commencement of tenancies, *ib.*

Manures, *ib.*

Construction and operation of, 122.

On parol tenancies, *ib.*

On leases and agreements, 125.

Upon whom binding, 123, 134.

Remedies for breach of, 133.

Declaration of, 138.

**CUSTOM OF THE COUNTRY—continued.**

Exclusion of, by agreement, 125.

Forms of stipulation for, 252, 260, 264.

Form of proviso in lease as to, 420.

**DECLARATION.**

As to custom of the country, 138.

**DEER.**

When distrainable, 22.

**DENBIGHSHIRE.**

Agricultural customs in, 110, 112.

**DERBYSHIRE.**

Epitome of agricultural customs in, 62.

Form of stipulations adapted to, 256, 288, 350.

**DESERTION.**

Of premises, 38.

**DEVONSHIRE.**

Epitome of agricultural customs in, 65.

**DILAPIDATIONS.**

Stipulations for deduction of, from outgoing allowances, 240, 432.

that such deductions shall be spent upon farm, 389, 470.

**DISCLAIMER.**

Forfeiture of tenancy by, 10.

Waiver of, 11.

**DISTRESS.**

Rent must be certain or reducible to certainty, 15, 17.

Where premises held under agreement for a lease, 17.

Who may distrain, 16.

Assignor of a lease, 17.

What may be distrained, *ib.*

Implied agreement not to distrain, 18.

Corn crops, *ib.*

Sheep, and beasts of the plough, 21.

Threshing machines, 22.

Animals *feræ naturæ*, *ib.*

Form of agreement giving power of distress, 251, 360.

**DOG.**

Stipulation to keep, for landlord (form), 294.

not to keep on farm, 273.

**DORSETSHIRE.**

Epitome of agricultural customs in, 66.

**DOUBLE RENT.**

Statutable provision for, 34.

Creates no tenancy, *ib.*

May be recovered in County Court, *ib.*

Form of stipulation for, 337.

**DOUBLE VALUE.**

- Statutable provision for, 33
- Form of notice, *ib.*

**DOWNS, WILTSHIRE.**

- Management of, 434.
- Form of lease adapted to, 375, 435.

**DRAINAGE.**

- Tenant for life may charge cost of, upon estate, 149.
- Allowances for, by custom :
  - in Kent, 74.
  - in Lincolnshire, 81.
  - in Notts, 84.
  - in part of Staffordshire, 92.
- Allowances for, by agreement :
  - Common practical form, 252.
  - The Earl of Yarborough's scale, 226, 371.
  - Mr. Bartholomew's scale, 356.
  - Mr. Woollett Wilmot's scale, 383.
  - Condition of landlord's sanction, 372.
  - Stipulation to perform, 294, 356.
- Forms of covenants in leases :
  - that lessee shall drain, 456, 500.
    - within seven years, 473.
  - that lessee shall drain, lessor finding tiles, 464, 500, 501.
  - that lessor shall make a certain allowance for, 473, 487.
  - that lessee shall pay interest upon outlay by lessor for, 502.

**DRAINS.**

- Reservation of right to make, 390.

**DURHAM.**

- Epitome of agricultural customs in, 67.

**EATAGE.**

- Deleterious nature of, no excuse for non-payment of rent, 14.

**EMBANKMENTS.**

- Form of stipulation that tenant shall make, and keep in repair, 391.

**EMBLEMENTS.**

- What they consist of, 39.
- Tenants at will entitled to, 3.
- Owners of any uncertain estate entitled to, 39.

**ENTRY. See PRE-ENTRY.**

- Different times of, 48, 121, 167.
- Which most expedient, 168, 217.
- Form of reservation of right of entry to view, 408, 437.
- Covenant to allow landlord to enter to view, 424.

**ESSEX.**

Epitome of agricultural customs in, 68.

**EVICTIION.** *See* **PROVISORS.**

Partial, legal effect of, 215.

For non-payment of rent, 233.

For breach of covenants, 241.

Without legal process, 243.

**EXCEPTIONS.**

Objects and expediency of, 162.

Definition of, 156.

Trees, 157.

Pits, *ib.*

Soil and turf, *ib.*

Construction of, 158, 162.

Forms of, 249, 267.

of coals, 342.

of cottages, 407.

**EXCHANGE.**

Form of reservation of power to landlord to exchange lands, 295, 482.

**EXHAUSTING CROPS.**

Stipulations against, 192, 203.

forms of, 251, 294, 414.

**EXPULSION.** *See* **EVICTIION—PROVISOR.****FALLOW CROPS.**

Use of, 193.

**FARM.**

Description of. *See* **PARCELS.**

State of, at the different times of entry, 197.

**FARMER.** *See* **TENANT.**

Stipulation that he shall reside on farm. *See* **RESIDENCE.**

that he shall not occupy other neighbouring land, 273.

**FARMING COVENANTS.** *See* **COVENANTS.**

Effect of provision for, in agreement for lease, 146.

**FEEDING PRICE.**

Explanation of, 75.

**FENCES.**

Stipulations as to forms of, 272, 275, 471.

that hedges shall be kept at the joint expense of landlord and tenant, 486.

that lessor may repair defective fences, and recover from lessee, 491.

**FIARS PRICES, 173.****FIRE. See INSURANCE.**

Destruction of farm buildings by, 14.

rent continues to run, *ib.*

Under covenant to leave in repair, tenant must rebuild, 186.

Landlord not bound to rebuild, 170.

even although he insure and receive the money, 171.

**FISHING. See GAME.**

Reservation of right, 482.

Covenant not to drain lake or injure fish, 487.

**FIVE-FIELD COURSE. See ROTATION OF CROPS.****FIXTURES, AGRICULTURAL.**

Distinction between agricultural and trade, 40.

Expediency of such distinction, 40, n.

May be removable by custom, 41.

Form of covenant by lessor that lessee may remove, 427.

**FLAX, 192, 203, 251, 392, 414.****FLINTSHIRE.**

Agricultural customs in, 110, 112.

**FODDER. See MANURE.**

Form of covenant to consume, on farm, 413, 425, 456.

Not to remove, during last two years of term, 414.

To restore, during last two years, 425.

**FOLDING, 212.**

Form of stipulation as to, 288.

Form of covenant as to, 444.

to pay outgoer for, 458.

**FORAGE CROPS, 193.****FORFEITURE. See PROVISIO.**

For breach of covenant to insure, 186.

For assigning, 206.

For non-payment of rent, 234.

For breach of covenants, 237.

For relief against, 238.

For bankruptcy, &c., 238, 241.

For neglect to repair, 241.

Outgoing allowances in cases of, 239.

Waiver of, 245.

Forms of proviso for. *See* PROVISIO.



**FORMS.** *See* TABLE OF CONTENTS.

Of instruments of letting from year to year :—

Common practical forms :

Agreement for a lease, 248.

Shorter form, 253.

Proposal to take, 255.

Lease from year to year, 256.

Miscellaneous stipulations, 266.

Special precedents, 310. *See* TABLE OF CONTENTS, and the various titles of subjects to which the special provisions in these precedents apply.

Of leases. *See* LEASE.

Of miscellaneous parts of a lease, 496.

Of schedules :

Of fixtures, 433.

Of lands, distinguishing grass and arable, and litter, references to grass lands to be ploughed, 453.

with references to tithe-apportionment map, 468.

with course of cropping in last year, and special schedules as to course of cropping during the term, 504.

Of notice to quit, 30.

or pay double value, 33.

to deliver up possession, 37.

Of valuation between outgoer and incomer.

**FOUR-FIELD COURSE.** *See* ROTATIONS OF CROPS.**GAME.**

Reservation of, 159.

Statutable provisions as to, 160.

Grant of right of sporting, 160, n.

Whether reservation should be entire or partial, 164.

Damage from neighbouring preserves of, 165.

Forms of stipulations in respect of, (absolute to landlord,) 250, 272.

with allowance to tenant to shoot partridges, &c., 272.

with provisions as to rabbits, 375, 382, 408.

with provisions for compensation for damage, 307.

covenant that tenant shall preserve, 395, 494.

Provision that tenant shall not steep seed-corn in arsenic, 414.

**GLAMORGANSHIRE.**

Agricultural customs in, 113.

Form of stipulations adapted to, 289.

outgoing and incoming, 296

**GLOUCESTERSHIRE.**

Epitome of agricultural customs in, 69.

**GOATS.**

Form of stipulations prohibiting keeping, 394.

**GOOD HUSBANDRY.**

Obligation arises from relation of landlord and tenant, 45.

General stipulations for, 273.

General covenants for, 411, 414, 425.

Special stipulations and covenants, 275—288. *See also* ROTATIONS OF CROPS—MANURE—HAY—STRAW—&c. &c.

**GRASS LANDS.**

Ploughing up. *See* WASTE.

Covenant against, expediency of, 187.

Construction of, 212.

Forms of stipulations as to, 251, 274.

not to plough up land seven years in grass, 369.

Forms of special covenants that lessee may break up certain, laying them down again, 427, 484.

not during last seven years of term, 483.

Form of covenant not to mow, more than once a year, 465.

**GRASS SEEDS.** *See* PRE-ENTRY.

Form of stipulation as to sowing, 274.

**GREEN CROPS.** *See* ROTATIONS OF CROPS—FODDER—MANURE.

Form of stipulation for drilling, 379.

for consuming on premises, 382, 425.

**GUANO.**

Allowance for, 227.

forms of stipulations as to, 372.

**HABENDUM.**

Definition of, 165.

Operative words in yearly lettings, *ib.*

Construction of, 166.

Commencements of tenancies fixed by, 167.

Duration of tenancy fixed by, 168.

Operation if prospective, 169.

Forms of:

in agreements, 249, 267.

in leases:

for twenty years certain, and then until two years' notice, 409.

for eight years, determinable at four years on notice, 439.

Common form, 454.

**HAMPSHIRE.**

Epitome of agricultural customs in, 73.

Form of agreement adapted to, with tenant-right, 368.

**HARROWING.**

Outgoer to harrow in seeds gratis, 296, 486.

Incomer may enter to harrow and roll seeds, 345.

**HAY.**

Sale of, 193, 211; *and see* the customs of the respective counties.

Forms of stipulations as to, 274.

not to sell off farm, absolute, 250, 291.

with conditions for bringing back other manure, 291, 370,  
372, 413, 425, 456, 485.

after notice to quit given or received, 370.

more than one third part, 385.

**HEMP, 192.****HEREFORDSHIRE.**

Epitome of agricultural customs in, 71.

**HERTFORDSHIRE.**

Epitome of agricultural customs in, 72.

**HOLDING OVER.**

Effect of, 32.

Penalty rent of 5*l.* per day for, (form,) 353.

Double rent for, (form,) 337.

**HUNTING. See GAME.****HUNTINGDONSHIRE.**

Epitome of agricultural customs in, 73.

**HUSBANDRY. See GOOD HUSBANDRY.**

Acts of. *See* OUTGOING ALLOWANCES.

**HUXTABLE, MR.**

His opinion as to culture covenants, 200.

**INCLOSURE COMMISSIONERS.**

Reservation of power to exchange lands under the authority of, 295.

**INCOMER.**

The representative and agent of the landlord, 123, 134, 136.

**INCOMING PAYMENTS. See OUTGOING ALLOWANCES.**

Necessity of stipulation respecting, 189.

Form of, in agreement, 249.

Form of covenant that sums deducted for dilapidations shall be spent  
upon farm, 470.

Form of covenant that leasee shall pay to outgoer, 491.

**INFANT.**

Cannot avoid a lease which is for his own benefit, 9.

Cannot appoint an agent, *ib.*

**INJUNCTION.**

To restrain waste, 24.

**INJURIOUS PLANTS. See EXHAUSTING PLANTS.**

**INSOLVENCY.** *See* **BANKRUPTCY.**

**INSTRUMENTS OF LETTING.**

From year to year :

Various kinds of, 137—150.

Parts of, 151—247.

Forms of, 248—400.

For terms of years, 401.

Forms of, 407—506.

**INSURANCE.**

Rent continues to run although farm buildings burnt down, 14.

Landlord not bound to spend insurance money in rebuilding, 171.

Construction of covenant for, 186.

Form of stipulation as to, that tenant shall insure, 250, 271, 426.

that landlord may insure in default, 375.

that landlord may insure, and tenant shall pay half the premiums, 389.

that landlord shall insure, and expend insurance money in rebuilding, 411.

**INTERPRETATION CLAUSE.**

In agreement, 384.

In lease, 420.

**KENT.**

Epitome of agricultural customs in, 73.

Weald of, tenant-right in, 222.

**LABOURERS.**

Forms of stipulations as to :

Not to take labourers of bad character, 375.

That landlord may admit or expel, 396.

Agreement to let labourer's cottage, 399.

Form of reservation of labourers' cottages, 407.

**LADY-DAY TENANCIES,** *See* **AWAYGOING CROP—CROP.**

Most expedient for an arable farm, 167.

**LANCASHIRE.**

Epitome of agricultural customs in, 77.

Form of agreement adapted to, 346.

**LAWES, MR.**

His opinion as to culture covenants, 200.

**LEASE.** *See* **AGREEMENT FOR LEASE—INSTRUMENT OF LETTING—HABENDUM—REDDENDUM—RESERVATIONS—COVENANTS.**

From year to year, 152.

Form of, 256.

Execution of, 247.

**LEASE—continued.**

For term of years,

Policy of granting, 401.

Proper duration of, 402.

Covenants in, 404.

Parts of, 403.

Forms of :

Landlord's lease [Lady-day entry, with pre-entry on 1st of January to plough and sow, and retention of farm-house and stables till 1st May], 407.

Tenant's lease [Lady-day entry, no pre-entry to plough—retention of farm-yard for two months—no awaygoing crop], 421.

Of a down farm [sheep-folding and water meadows], 434.

Common agricultural lease [Michaelmas entry], 453.

Staffordshire, with corn rent [Lady-day entry], 459.

With particular culture covenants for last five years [Whitsunday and after harvest entry, and last crop to be purchased by landlord], 469.

With grain rent with maximum and minimum, 473.

With rent partly in money and partly in oats [Martinmas entry, with option in landlord to take awaygoing crop at valuation], 475.

With provisions as to fences, 478.

In use in the Lothians, 479.

Another form, 489.

Short form under statute, 495.

Statute 8 & 9 Vict. c. 124, App. 517.

Miscellaneous, 496.

Stamp duties applicable to, 510.

**LEICESTERSHIRE.**

Epitome of agricultural customs in, 78.

Form of lease from year to year adapted to, 256.

**LIME.**

Construction of covenant by landlord to supply, 211.

Allowances for, 227, 371.

**LINCOLNSHIRE.**

Epitome of agricultural customs in, 80, 220.

Forms of agreement adapted to :

The Earl of Yarborough's, 357.

Mr. Bartholomew's, 352.

**LINSEED. See CUSTOMS OF NOTTS.**

Allowance for, 227.

Form of stipulations as to, in Hampshire, 372.

**MACHINERY.**

Form of covenant by lessor to allow lessee to remove, 427.

**MANURE.** *See* UNEXHAUSTED MANURES—HAY.

Obligation on tenant not to carry away, 45.

depends upon custom of district, 47, 292, n.

Covenants as to, 189.

Construction of, 209.

Allowances for leading, 228.

Forms of covenants and stipulations as to, 250, 278, 293.

To be left at end of tenancy without payment, 250, 279, 291, 447.

To be paid for by valuation, 279, 291, 363, 428.

Increased amount to be paid for, 338, 383.

Produce of sale of hay and straw to be expended in purchase of, 370.

All fodder crops to be consumed on farm, 413, 425, 447, 456.

Lessee may gather sea-weed for, 489.

and limestone, *ib.*

**MARLING,** 227.

Form of stipulation for, 294, 378.

**MATERIALS.**

Form of stipulations and covenants that landlord shall supply, 249, 450, 455, 457.

**MEAT.** *See* STOCK.

Covenants as to production of, 200.

**MEADOW LAND.** *See* GRASS LANDS—WATER MEADOWS.

Ploughing up, is waste, 23.

Forms of stipulations. *See* GRASS LANDS.

Not to mow, more than once a year, 377, 465.

To manure, every other year, 377.

To allow pre-entry for cleansing gutters, &c. 466.

**MERIONETHSHIRE.**

Agricultural customs in, 112.

**MICHAELMAS TENANCIES.** *See* ENTRY—AWAYGOING CROP—CROP.**MIDLAND COUNTIES.**

Lease from year to year adapted to customs of, form of, 256.

**MILL.** *See* THIRLAGE.**MINERALS.** *See* RESERVATIONS.

Exception of, 157.

**NORFOLK.**

Epitome of agricultural customs in, 84.

Form of stipulations adapted to, 288.

outgoing and incoming, 297.

**NORFOLK-SHIFT,** 195, 329. *See* ROTATIONS OF CROPS.

**NORTHAMPTONSHIRE.**

Epitome of agricultural customs in, 82.

**NORTHUMBERLAND.**

Epitome of agricultural customs in, 82.

Usage as to leases and agreements in, 341, n.

Form of agreement in use in, 341.

**NORTH WALES. See WALES.****NOTICE TO QUIT.**

In tenancies from year to year. *See* TENANCY.

Who are entitled to, 8.

May be by parol or writing, 24.

Who may give, *ib.*

Agents, 25.

To whom given, *ib.*

Misnomer, when waived, 26.

Length of, 25.

Operation of special custom upon, 28.

Description of premises in, *ib.*

Certainty of intent, 29.

Service of, *ib.*

Waiver of, *ib.*

Forms of, 30.

Stipulations as to culture after, 203.

Of breach of covenants, 242.

Of disrepair, 411.

**NOTTINGHAMSHIRE.**

Epitome of agricultural customs in, 84.

Form of agreement adapted to, 326.

for heavy lands, 329.

(Mr. Parkinson's), 334.

**OATS.**

Form of reddendum that rent shall be partly payable in, 475.

**OFFGOING CROP. See AWAYGOING CROP.****OIL CAKE.**

Allowances for consumption of, 85, 227. (*See* the customs for Notts, and Lincolnshire.)

Proportion of value of, received by the farm.

**ORCHARD, 188.**

Form of stipulation as to, 288.

**OUTGOING ALLOWANCES. See the respective customs of the country, and also titles, ENTRY—AWAYGOING CROPS—CROPS—MANURES—PERMANENT IMPROVEMENTS, &c.**

General view of, 219.

**OUTGOING ALLOWANCES—continued.**

Opinions as to, 219, 225.

Practice of different districts, 220.

Table of, 223.

Advantages of Suffolk practice, 224.

Valuation of, 229.

In case of forfeiture, 239.

The Earl of Yarborough's scale of, 226, 364, 371; and see the respective forms.

Forms of stipulations as to :

Common practical, 251.

Compensation for one ploughing, 299.

Lady-day tenancies—growing crops taken at a valuation, 295.

Hay to be taken at a valuation, 371.

For Glamorganshire customs, 296.

For Norfolk, 297.

For Shropshire, 298.

For Cheshire, 299, 383.

For Lancashire, 300.

with tenant-right, 349.

For Midland counties, 262.

For Yorkshire, 302.

For Notts, 305.

For Bedfordshire, 310.

For Suffolk, 314.

For Worcestershire, 324.

For Notts, 326, 329, 334.

For Sussex, 503.

For the Weald of Sussex, 504.

Where awaygoing crop taken, 301.

Where purchased, 302, 362.

Where acts of husbandry only paid for, 417, 428.

Outgoer to have use of rick-yards and granary, 371, 416.

For permanent improvements generally, 305.

For buildings, 306.

**OUTGOING OBLIGATIONS. (See the respective customs of the country.)**

Forms of stipulations for :

To allow pre-entry and accommodation to incomer, 370.

Forms of covenants for, 415.

**OVER-CROPPING, 176.****OXFORDSHIRE.**

Epitome of agricultural customs in, 86.

**PARCELS.**

Reasonable accuracy in description of, 154.

Should not include things reserved, 156.



**PARKINSON, MR. (of Ley Fields).**

His opinion as to half-tillage allowances, 86.

**PARTICULARS OF TENANCY.**

Effect of written statement of, 138.

**PARTIES.**

Certainty in description of, 153.

Effect of want of signature by one of, *ib.*

Benefit of covenant may be taken by persons who are not, *ib.*

**PASTURE LAND. See RENT—GRASS LANDS.**

When ploughing-up is not waste, 23.

**PEAT, 157.**

Form of reservation of power to dig, 387.

Regulation as to cutting, 394.

**PENALTY RENTS, 180.**

Forms of. *See RENT.*

**PERMANENT IMPROVEMENTS. See OUTGOING ALLOWANCES—****BUILDINGS—DRAINAGE.**

Stipulation as to, general, 305.

Form of covenants as to, 427.

that lessee shall pay per-centage upon lessor's outlay for, 501.

that lessee shall make, lessor providing materials, 502.

**PIGEONS.**

Form of covenant to keep up stock of, 448.

**PIGS.**

Form of stipulation as to ringing, 371.

Prohibiting allowing, to go at large, 394.

**PITS.**

Exception of, 157.

**PLANTING.**

Reservation of power to plant, making compensation, 381, 482.

**PLANTS.**

Exhausting and injurious, 202. *See EXHAUSTING AND INJURIOUS PLANTS.*

**POND.**

Covenant by landlord to make, 450.

**POSSESSION.**

Obligation to give up, 32.

Holding over, *ib.*

Recovery of, 34.

**POSSESSION**—*continued*.

- under County Courts Act, *ib*.
- under 1 & 2 Vict. c. 74, 36.
- under 11 Geo. II. c. 19, 38.
- under 57 Geo. III. c. 52, *ib*.

**POTATOES.**

- Form of stipulation against, 344, 377, 414.
- Gardens for cottagers, 488.

**POWER OF ATTORNEY.**

- To agent to sign agreement or lease, 154.

**PRE-ENTRY.** *See the respective customs.*

- Object of, in farming tenancies, 167, 213, 216, 217.

In Lady-day entries, 168.

To plough :

- at separation of outgoer's corn crops, 168, 251.
- at 1st of March in last year, 284.
- at 1st of January in last year, 415.
- at 20th November on fallows, and 20th March on spring-corn lands, 355
- at request of landlord if dissatisfied with outgoer's working fallows, 361.

To sow seeds with Lent corn, 416.

In Michaelmas entries :

- On 10th November to plough for turnips, 456.

To sow seeds with Lent corn, 280, 456. *See* ACCOMMODATION FOR THRESHING, &c.

**PREMISES.** *See* PARCELS.

Description of :

- in instrument of letting, 154.
- in notice to quit, 28.

Holding over, 32.

Duration of, 38.

Recovery of possession of, 34.

**PROPOSALS TO TAKE.**

Require no stamp, 138.

Signature of, 246.

Form of, 255.

**PROVISOES AND CONDITIONS,** 232.

Against the operation of custom of the country, 232.

For resumption of land, 233.

For re-entry, 233, 241.

For non-payment of rent, 234, 242.

For non-repair, 241.

For breach of covenants, 242.

For waste, *ib*.

**PROVISOES AND CONDITIONS—continued.**

For expulsion without legal process, 243.

Forms of:

common practical, 252, 254, 308.

for re-entry in case of non-payment of rent, 308, 457.

in case of bankruptcy, &c., 308, 440.

Special, 429.

Exclusion of custom of the country, 252, 309, 420.

As to tenancy under agreement, 309.

Agreement not to operate as demise, 252, 309.

For re-entry without legal process, 418.

For determination of term on notice, 452.

For changing money rent into corn rent, 461.

**PULSE CROPS, 192, 193.****PUMP.**

When included in demise, 155.

**PUSEY, MR.**

His proposed alteration in the law, 148.

**QUIET ENJOYMENT.**

Warranty of, by landlord implied by law, 13.

to what it extends, 14.

Construction of covenant for, 214.

Form of stipulation for, 251.

Form of common covenant, 433.

covenant absolute, 467.

**QUIT. See NOTICE TO QUIT.**

Form of covenant to, 411.

**RABBITS. See GAME.****RAPE DUST.**

Allowance for, 227.

**REBUILD.**

Landlord not bound to, 171.

When tenant is bound to, 186.

**RECOVERY OF POSSESSION. See POSSESSION.****REDDENDUM. See RENT.**

Formal words of, 169, 249.

Certainty of, 169.

Construction of, 170.

Forms of, 268, 409, 423, 439, 478.

**RE-ENTRY. See PROVISO.**

Forms of proviso for, 233, 235, 264, 409, 418, 425, 439, 478.

With payment for crops, &c., 381.

**REFEREE.**

Appointment of, 232. *See* **ARBITRATION.**

**REMAINDERMAN.**

Acceptance of rent by, evidence of continuing tenancy, 9.

Not bound by farming agreement, 148.

**RENT. *See* DISTRESS—REDDENDUM.**

Implied obligation to pay, 14, 15.

Not affected by destruction by fire, &c., 14.

Implication of law arising from payment of, 6.

Acceptance of, by remainderman, evidence of continuing tenancy, 9.

Period of payment of, 15, 169.

Verbal agreement for reduction of, does not determine tenancy, 7, 147.

Reservation of, by written instrument, 169.

Days of payment under written instrument, 170.

Demand of, 170, 234.

Damages or payments cannot be set off against, 170.

Exceptions to this rule, *ib.*

Arrears of, 171.

Metayer, system of, *ib.*

Receipt of, when a waiver of forfeiture, 245.

when not, 417.

Covenants for payment of, 249, 270.

Grain and produce rents :

origin of, 172.

objections to, 172, 177.

Lord Kinnaird's system, 173.

Mr. Sharman Crawford's system, 174.

the Duke of Sutherland's system, 175.

another system, 176.

Forms of stipulations for, in agreements based upon averages of wheat, barley, and oats, 268.

Forms of reddendum reserving produce rents :

wheat rent with a maximum, 473.

part in money and part in oats, 475.

wheat rent with a maximum and minimum, 498.

wheat, barley, and oats rent adapted to tithe rent-charge averages, 499.

Form of proviso that either party may change fixed rent into a corn rent, 461.

Money rents :

how ascertained, 178.

systems of valuation, 179.

Covenant to pay, 183.

Forehand, 180, 249.

Stipulations for, in last year of term, or after notice to quit given, 353, 358.

Forms of, 410, 442.

**RENT—continued.**

## Additional,

- expediency of, 182,
- for ploughing grass, 180.
- legal effect of, *ib.*
- stamp duties not increased by, 515.

## Forms of stipulations for, 249, 269.

- of covenants for, 257, 337, 410, 440, 454, 496, 497.

Form of proviso as to, 308. *And see* Proviso.

- that lease shall be void if two payments in arrear, 488.

**REPAIRS.**

## Obligation of tenant to, 6.

## Stipulations for, 185.

## Construction of, 241.

## Forms of, 250, 271, 411, 412, 424.

- that lessee shall put farm in permanent working order, 501.
- that in default landlord may repair, 353, 376, 390, 491.
- that landlord shall supply timber, &c., 426, 455.
- that tenant shall lead materials for, 345, 353.

## Landlord to find rough materials and to rebuild in case of inevitable accident, 369, 382.

## Dilapidations from non-repairs to be deducted from outgoing allowances, 364.

## Proviso for re-entry for non-repairs, 241, 243, 418.

**RESERVATIONS.**

## Objects and expediency of, 162.

## Definition of, 156.

## Of right of way, 158.

## Of right of retaking portion of farm, 159, 233, 490.

## Of right of sporting, 159, 387.

## Forms of, 249, 267, 407, 422, 454.

- of minerals, 386, 482.
- of coal, 342.
- of cottages, 407.
- of power to exchange lands, 469.
- of power to plant, 386.
- of peat, 387.
- of brick earth, 373.
- of power to alter roads and boundaries, 387, 469.
- of services, 388.

**RESIDENCE UPON FARM.**

## Stipulation for, 206.

## Forms of, 250, 273, 386, 476.

**RESUMPTION OF LAND, 159, 233.**

Forms of stipulation for, 249, 387.  
of covenants for, 418.

**RIGHT OF WAY.**

Reservation of, 159.

**ROAD.**

Effect of demise of use of, 156.  
Reservation of power to alter, 387, 482.  
Covenant that lessee shall use, paying share of repairs, 488.

**ROTATIONS OF CROPS. See the respective customs of the country, and tit. CROPS.**

Explanation of practices as to, 193.  
Policy of stipulations for, 198, 276.  
How compelled, 195, 196.  
Forms of stipulations and covenants for admitting four, five, or six field course, 275.  
for six-field course, 282, 286, 291.  
on down arable land, 446.  
for five-field course, 278, 285, 392.  
to be left in, at end of term, 483.  
for four-field course, 280, 283, 288, 343, 369, 393, 492.  
admitting two successive corn crops, 445, 465.  
no two successive corn crops unless seeds miss, 254, 483.  
two crops to a fallow, 377.  
two corn crops after turnip fallow, and fallow, 413.  
injurious rotation to be decided upon by arbitrators, 429.  
covenants respecting, during last five years of term, 471.  
not to alter rotation during last seven years of term, 492.

**ROYALTIES, exception of, 157.****RUTLANDSHIRE.**

Epitome of agricultural customs in, 87.

**SCHEDULES. See FORMS.**

Of cropping to be given to landlord, (form,) 294, 348.  
Forms of, to annex to agreement or lease, 265, 453, 504.

**SEA WEED.**

Demise of right of gathering, 489.

**SEEDS.**

Missing of, 197.  
Stipulation as to, 254, 355, 483.  
against growing, 294.  
not to depasture, 456.

**SERVANT.**

Occupation by, is not a tenancy in the servant, 3.

**SERVICES, RESERVATION OF.**

Policy of, 178, 213.

Forms of:

team work, 294, 375.

leading coals, 369, 482, 491.

thirlage, 389, 493.

landlord's smithy, 389.

to attend steward's court and obey mandates, 389.

**SHEEP. See STOCK—FOLDING.****SHROPSHIRE.**

Epitome of agricultural customs in, 87.

Form of stipulations as to outgoing allowances adapted to, 298.

**SIGNATURE.**

Effect of want of signature by one of the parties, 153.

by agent, 154.

Of a proposal to take, 246.

Of an agreement for a lease, *ib.*

Of a lease, *ib.*

**SMITHY.**

Form of stipulations as to, 389.

**SOMERSETSHIRE.**

Epitome of agricultural customs in, 88.

Form of stipulations adapted to, 288.

**SOWING GRASS SEEDS. See PRE-ENTRY.****STAFFORDSHIRE.**

Epitome of agricultural customs in, 91.

Form of stipulations adapted to, 256, 290.

**STAMP DUTIES.**

Upon instruments of letting farms, 137.

None payable on proposals to take, 506.

On agreements for a lease, 507.

On leases, 510.

**STATUTE.**

51 Hen. III. st. 4 (distress), 21.

21 Jac. I. c. 16 (arrears of rent), 171

2 W. & M. sess. 1, c. 5 (corn crops, distress), 18.

4 Geo. II. c. 28 (double value), 33.

11 Geo. II. c. 19 (corn crops, distress), 19, 21, 34, 38.

56 Geo. III. c. 50 (ditto), 19.

57 Geo. III. c. 52 (recovery of possession), 38.

57 Geo. III. c. 93 (costs of distresses), 22.

1 & 2 Will. IV. c. 32 (game), 160.

**STATUTE—continued.**

- 2 & 3 Will. IV. c. 74 (Prescription Act—game), 159.
- 3 & 4 Will. IV. c. 27 (distress for rent), 16, 171.
- 3 & 4 Will. IV. c. 52 (arrears of rent), 171.
- 6 & 7 Will. IV. c. 71 (Tithe Commutation Act), 15.
- 1 & 2 Vict. c. 74 (recovery of possession), 36.
- 8 & 9 Vict. c. 124 (short leases—habendum), 165, 495, App. 517.
- 9 & 10 Vict. c. 95 (County Courts Act), 34.
- 11 & 12 Vict. c. 29 (game), 162.
- 12 & 13 Vict. c. 100 (Private Money Drainage Act), 149.
- 13 & 14 Vict. c. 97 (Stamp Act), 506.

**STOCK.**

- Importance of, to good husbandry, 200, 276.
- Form of stipulations as to :
  - that sheep stock shall be taken at a valuation, 397.
  - to keep sufficient, 377, 382.
  - to keep average amount during last two years of term, 414.

**STOCKING.**

- Regulations as to stocking pastures, 397.

**STRAWBERRY BEDS.**

- Ploughing up, is waste, 24.

**STRAW. See HAY—FODDER—MANURE.**

- Form of covenant that lessee shall retain convenience for consuming, 428, 450, 506.
- that lessee shall leave last crop without payment, 474, 485.

**SUFFERANCE.**

- Tenancy on, 2.

**SUFFOLK.**

- Epitome of agricultural customs in, 94.
- Advantages of system of tenant-right in, 224.
- Form of agreement adapted to, 314.

**SURREY.**

- Epitome of agricultural customs in, 94.
- Tenant-right in, 222.

**SUSSEX.**

- Epitome of agricultural customs in, 96.
- Forms of covenants adapted to, 503.
- Weald of Sussex, 504.

**TACK.**

- Forms of, in use in the Lothians, 479, 489.

**TAXES.**

- Covenant to pay, construction of, 183.
- Forms of, 249, 271, 343.



**TEAM-WORK.**

Forms of stipulation to perform, 294, 375.

**TENANCY.**

At will :

- How created, 1.
- How determined, 3.
- Rights and obligations incident to, 4.

From year to year :

- Differs from tenancy at will, 5.
- Reasonable notice, *ib.*
- How created, 6.
- Determination of, 7.
- By disclaimer, 10.

By parol :

- Implied warranty of quiet enjoyment, 13.
- No warranty that premises shall be adapted to the purpose contemplated by tenant, 14.
- Tenant's obligation to pay rent, 15.
- Landlord's obligation to pay tithe rent-charge, *ib.*
- Right to distrain. *See* DISTRESS.
- Tenant's obligation not to commit waste. *See* WASTE.
- To give up premises at expiration of tenancy, 32.

Under written instrument :

- Nature of the instrument, 137.
- Proposals to take, 138.
- Particulars of tenancy, *ib.*
- Declaration as to custom of the country, *ib.*
- Acknowledgment of terms of tenancy, 139.
- Agreement for a lease, 140.
- Lease from year to year, 156.

Commencement of, 48, 121, 165, 217.

Duration of :

- Under instrument of letting, 166.

For terms of years :

- Under lease, 401.
- Advantages and disadvantages of, 401.
- Length of term, 402.
- Formal parts of lease, 403.

**TENANT.**

Character, capital, and skill of, should be considered in drawing a letting contract, 190, 422.

Stipulation that he shall reside on farm, 206.

Forms of, 250, 273, 386, 476.

Not to occupy any neighbouring land, 273.

**TENANT FOR LIFE.**

Cannot bind remainderman by farming agreement, 148.

May charge cost of drainage on estate, 149.

**TENANT-RIGHT.** *See* OUTGOING ALLOWANCES.

**THIRLAGE.**

Construction of covenant as to, 213.

Inexpediency of, 178.

Forms of stipulations for, 389.

**THRESHING MACHINES.**

When distrainable, 22.

Form of covenant that lessee shall purchase, at a valuation, 487.

**TILLAGES.**

Recognition of custom to pay for, 135.

Customs of the different districts. (*See* the respective names of the counties.)

General view of allowances throughout England, 219.

Form of valuation of, 223. **APPENDIX.**

Covenants and stipulations for payments for, to outgoer. *See* OUTGOING ALLOWANCES.

**TIMBER.** *See* TREES.

Covenant by lessor to allow, for repairs, 250.

**TITHES.**

Whether they may now be deducted from awaygoing crop, 124.

**TITHE RENT-CHARGE.**

Payable by landlord, 15.

Inconveniences of not including it in the rent, 16.

Forms of stipulation as to, 251, 269.

Covenant that tenant shall pay, 455.

that landlord shall pay, 467.

Corn rent adapted to averages of, 499.

**TOWN MANURE.**

Allowance for, 227.

**TREES.** *See* COPPICES.

Waste in respect of, 23.

Included in general demise, 157.

Should be excepted from lease, 157.

House-bote, plough-bote, &c., 23, 157.

Covenants in respect of, 188.

Forms of stipulations and covenants, 272.

**TURF.** *See* PEAT.

**UNDERLETTING.** *See* ASSIGNMENT.

Covenants against, 204, 370.

**UNDERWOOD.**

Allowance for, to outgoer, 74, 223.

## UNEXHAUSTED MANURES.

Allowance for, by custom :

- in Derbyshire, 62.
- in Kent, 75.
- in Lincolnshire, 81.
- in Notts, 85.
- in Shropshire (for liming), 88.
- in part of Staffordshire (for ditto), 92.
- in Surrey, 95.
- in Sussex, 97.
- in Yorkshire, 108.

Allowances for, by agreement. *And see* OUTGOING ALLOWANCES, and the forms there indexed.

The Earl of Yarborough's scale, 226, 371.

The Earl de Grey's scale, 310.

Mr. Tollemache's form, 315.

Mr. Woollett Wilmot's scale, 381.

Scale adopted in Lancashire, conditional upon notice of cropping being given to landlord, 349.

Scale adopted on the Duke of Devonshire's estates, 350.

## UP AND DOWN LAND.

Stipulations adapted to, 276.

## VALUATIONS.

For rent, 178.

Of outgoer's interest :

construction of stipulation, 229.

Forms of stipulations for :

general provisions, 251, 263.

particular provisions :

from Lord Yarborough's agreement, 366, 372.

confining valuers to stipulations in agreement, 357, 368.

rule of valuation at the end of a term of years (special), 432.

that the agent of the estate shall be the umpire, 397.

with provision as to appointment of referee, 232.

Form of between incoming and outgoing tenant, App. 522.

## VERMIN.

Form of stipulation that tenant shall destroy, 392.

## WAIVER.

Of notice to quit, 29.

Of forfeiture for non-payment of rent, &c. 245.

Form of proviso that breaches shall not be waived, 417.

## WALES.

Epitome of agricultural customs in North, 109.

Form of stipulations adapted to, 199.

Special precedent of agreement in use in South, 384.

Form of stipulations adapted to, 289.

## WARWICKSHIRE.

Epitome of agricultural customs in, 99.

**WASTE.**

- Either voluntary or permissive, 22.
- Yearly tenants liable only for voluntary waste, *ib.*
- Voluntary waste—what acts amount to, 23.
  - Pernicious crops, *ib.*
  - Changing grass to arable, or arable to grass, *ib.*
  - Amelioration, *ib.*
  - May be restrained by injunction, 24.
- Covenants against, construction of, 184.
  - Form of, 414.
- Proviso for re-entry for, 242.
- Stipulations against, either voluntary or permissive, form, 254, 271, 414.

**WASTE LANDS.**

- Form of stipulation that tenant shall improve, 391.

**WATER.**

- Effect of demise of, 158.

**WATER MEADOWS.**

- Form of covenants as to management of, 443.
  - by landlord to allow water for, 451.

**WAY, RIGHTS OF.**

- Stipulation that tenant shall not suffer new to be created, 250.

**WEEDS.**

- Stipulation that landlord may destroy, and charge tenant, 333, 387.

**WESTMORELAND.**

- Epitome of agricultural customs in, 100.

**WILL, TENANCY AT. See TENANCY.****WILTSHIRE.**

- Epitome of agricultural customs in, 100.
- Form of lease adapted to, 434.

**WOAD, 192.****WORCESTERSHIRE.**

- Epitome of agricultural customs in, 103.
- Form of agreement adapted to, 324.

**YEAR TO YEAR, TENANCY FROM. See TENANCY.****YORKSHIRE.**

- Epitome of agricultural customs of North Riding, 106.
  - of East Riding, 107.
  - of West Riding, 108.
- Form of stipulations as to outgoing allowances, 302.



















